United Nations CCPR/C/SR.3069

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3069th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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Sixth periodic report of Chile (continued)

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Chile (continued) (CCPR/C/CHL/6; CCPR/C/CHL/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*

2. **Mr. Quezada** (Chile) said that although, over the past two years, the Criminal Chamber of the Supreme Court had tended not to apply a statute of limitations to crimes against humanity, it had done so in some cases involving the summary execution of persons for political reasons during the military dictatorship.

3. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity had been before parliament for a number of years. It had been approved by the Senate and was under consideration in the Chamber of Deputies. The Government had pledged to ratify the Convention in the near future.

4. **Ms. Badilla** (Chile) said that the Office of the Minister and Secretary-General of Government was reviewing the Anti-Discrimination Act and contemplating possible amendments. While the Act took account of gender identity, a bill submitted in 2013 addressed the issue more directly with a view to providing appropriate protection through the establishment of an effective regulatory framework incorporating, inter alia, the Yogyakarta Principles. The bill, which was currently before the Senate, would enable people to change their name and gender in the records of the Civil Registry and Identity Service without having to undergo a medical examination.

5. Regarding the situation of transsexual detainees, the Prison Service was working with transgender organizations, notably the Amanda Jofré Union, to respond to complaints and tackle issues that had arisen. The recently created Unit for the Promotion and Protection of Human Rights within the Prison Service aimed to set up differentiated procedures for transsexual detainees and organize workshops on gender identity for prison staff.

6. Concerning the reference, in article 373 of the Criminal Code, to penalties for individuals who committed offences against public morals or decency, she said that a new Code was being drafted in which that legal concept would no longer feature.

7. **Mr. Muñoz** (Chile) said that, since 2013, the training provided to carabineros had emphasized the obligation to treat lesbian, gay, bisexual and transgender (LGBT) individuals with respect, and to ensure that searches of transsexual detainees following their arrest were conducted by officers of the gender with which those persons identified.

8. **Ms. Ortiz** (Chile) said that 86.3 per cent of town councils in Chile made day-after contraceptive pills available to women, despite the fact that many mayors had initially been opposed to the idea.

9. **Mr. Flinterman** asked whether the reasons that had prompted the State party to make a declaration relating to the First Optional Protocol and a reservation to the Second Optional Protocol were still valid and, if not, whether it would consider withdrawing them. Such a decision would be particularly welcome on the twenty-fifth anniversary of the adoption of the Second Optional Protocol.

10. **Mr. Shany** sought clarification on whether the new Act on abortion would contain an exception for pregnancies resulting from incest, and whether abortions in exceptional cases would be legalized or simply decriminalized.

11. **Mr. Seetulsingh** requested the delegation to supply the latest figures for the total land acquired each year by the National Indigenous Development Corporation.

12. **Mr. Salvioli** asked the delegation to provide concrete examples of cases in which the Covenant had been applied in Chile. Regarding the obstacles to repealing the Amnesty Decree-Law (No. 2,191) cited by the delegation, he said that the State party should refer to the judgement of the Inter-American Court of Human Rights in the case of *Almonacid Arellano et al. v. Chile* when deciding how to proceed on the matter.

13. Turning to the issue of reparation for victims of torture, he wished to know whether the State party would consider reopening its official list of victims of the dictatorship in order to allow those who had not yet come forward to receive the same support and access to redress as other victims.

14. Lastly, he asked whether the Ministry of Health had established a protocol to ensure that intersex children were not subjected to mutilation, and whether the Ministry of Education had a protocol for the integration of children of different sexualities and genders.

15. **The Chairperson**, speaking as a member of the Committee, asked whether the effect of ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity would be to guarantee that crimes committed prior to ratification remained actionable.

16. **Mr. Neuman** said that he would appreciate more detailed information on standards of oversight of private security companies, many of which had limited financial and managerial capacity. He asked whether the Government was aware of the fact that such companies were arresting and detaining people in urban areas without authorization and, if so, what measures it was taking to address the issue.

17. Referring to the table in paragraph 85 of the State party's reply to the list of issues (CCPR/C/CHL/Q/6/Add.1), he wished to know why solitary confinement appeared to be so prevalent. Noting that the maximum permissible length of that measure was 10 days, he asked whether, on completion, it could be renewed by a judge, and whether there was an annual limit on its use. The delegation should indicate what measures, if any, were being adopted to reduce reliance on solitary confinement. He asked whether it was true that a substantial proportion of deaths in prison were the result of inter-prisoner violence, what steps were being taken to prevent such violence aside from efforts to reduce overcrowding, and what was being done to prevent suicides.

18. He invited the delegation to comment on reports that military jurisdiction had been exercised in cases involving civilians after the promulgation of Act No. 20,447 on 30 December 2010, including in cases involving carabineros. He asked whether the State party intended to make additional amendments to its legislation in order to further limit the jurisdiction of military courts.

19. Turning to the issue of justice for young offenders, he invited the delegation to comment on reports that there were no specialized judges or prosecutors for offenders between the ages of 14 and 18, that expertise was not being brought to bear during trials, in which the adversarial system continued to be used, that there was an absence of expertise in the supervision of the execution of sentences, and that there were few lawyers specialized in the representation of adolescents. The delegation should also describe the efforts being made to ensure that the pretrial detention of juveniles was ordered only as a last resort.

20. Lastly, he asked whether the Government planned to make the legal amendments necessary to ensure respect for the right to conscientious objection to military service, as required by the Covenant, particularly given that the number of volunteers for military service was declining and that conscription might therefore become necessary.

21. **Mr. Rodríguez-Rescia** sought clarification on the status of the national mechanism for the prevention of torture, which had reportedly still not been set up because of the need to allocate budgetary and human resources within the National Human Rights Institute.

22. While welcoming the measures adopted to ensure that the Counter-Terrorism Act (No. 18,314) was not applied in a discriminatory manner to members of the Mapuche community, he said that, in the light of reports that evidence obtained through the Act had been used in three cases involving such members, it was clear that the Act contravened the Covenant and needed to be amended.

23. **Mr. Shany** enquired whether the national plan of action on trafficking in persons had been adopted by the Government, whether a budget had been allocated for its implementation, and whether the framework agreement mentioned in paragraph 84 of the State party's reply to the list of issues had been signed. The delegation should indicate whether the plan of action addressed the issue of male victims, and whether the points raised by the Committee on the Elimination of Discrimination against Women in its concluding observations on the fifth and sixth periodic reports of Chile (CEDAW/C/CHL/CO/5-6) had been incorporated, particularly those relating to preventive measures, the identification of victims and rehabilitation programmes.

24. He wished to know what legal framework was applied to cases of internal trafficking in persons, which were not covered by Act No. 20,507 of 1 April 2011. The delegation should also indicate what specific measures were being taken to address the issue, whether the application of general criminal law in cases of sexual exploitation arising in relation to internal trafficking was commensurate with the gravity of the offence, and what measures, if any, were being taken to identify victims among vulnerable population groups. He asked what services were provided to victims who assisted with trafficking investigations, what the budgetary allocation for such services was, and what support was offered to persons who were initially unwilling to collaborate. It would also be useful to know what measures were being taken to protect the confidentiality of victims, and to what extent there was a conflict between the assistance provided to victims and the obligation of public officials to report crimes of which they had knowledge.

25. The delegation should explain what steps had been taken to improve the collection of data on trafficking in order to more accurately assess the scope and nature of the problem, and comment on the availability of training for State officials involved in the fight against trafficking, including members of the National Service for Minors and the Investigative Police.

26. With reference to the 11-point plan mentioned in paragraph 88 of the State party's reply to the list of issues, he asked whether any specific benchmarks had been set in that regard and whether a budget had been allocated for its implementation. He enquired what measures had been taken to improve prison conditions, including replacing inadequate heating, lighting, ventilation and access to drinking water. Further details were requested regarding the transfer of prisoners, including the prisons to which they were moved and the effects on those prisons.

27. He requested updated information on the progress of the bill on migration. He asked whether that bill facilitated the expulsion of migrants from the State party, ensured individual assessment of cases and established a preference for non-custodial measures. How much time did the bill afford migrants who challenged an expulsion order and was access to counsel provided during that time? Further information was requested on the average time a migrant could be held in detention pending the execution of an expulsion order, the limit on waiting time, and the legal criteria for extending the 24-hour detention period. The Committee would also welcome information on plans to abolish the practice of confiscating migrant workers' identity documents if they violated migration laws, and on

the length and conditions of pretrial administrative custody of migrant workers held for infringing migration laws.

28. **Ms. Chanet** expressed the hope that the Committee's recommendations would be taken into account in the review of the legislation concerning discrimination. She requested clarification of the procedures to be followed by law enforcement officials, including between the time of a person's arrest and that person's appearance before a judge; procedures following the execution of an arrest warrant, including the suspect's court appearance; the detainee's access to counsel; and procedures for cases of illegal detention. While she welcomed preventive measures, further information would be appreciated on disciplinary and/or criminal sanctions imposed on police officers found responsible for using violence. In the light of reports of law enforcement officials using violence against demonstrators, in particular in a case in 2011 involving minors, she asked whether legal action had been taken to investigate and prosecute those involved.

29. **Mr. Salvioli** asked how the offence of disorderly conduct was dealt with in view of the need to guarantee freedom of opinion and peaceful assembly. He enquired whether minority groups and civil society had participated in the process of preparing the periodic report. Lastly, given that crimes such as enforced disappearance continued to be committed, he invited the delegation to comment on the application of a statute of limitations to certain offences and the consequent risk of lesser sentences being imposed for serious offences.

30. **Mr. Seetulsingh** asked whether the National Human Rights Institute constituted the State party's national preventive mechanism. Regarding juvenile justice, he would like to know whether disaggregated data on detained juveniles were available. how many detained juveniles were from the Mapuche community, what offences juveniles were detained for, and whether such juveniles included street children. Disaggregated data were crucial to determine the causes and possible solutions of the problem.

31. **Mr. Bouzid** expressed concern at the decline in civil society organizations in recent years due to a lack of funding and asked whether the State party planned to allocate resources to such organizations.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

32. **Mr. Riveros** (Chile) said that the reservation to the First Optional Protocol to the Covenant reaffirmed the principle of non-retroactivity as set out in the Vienna Convention on the Law of Treaties. Given that the reservation had an impact on the reporting of acts committed in the dictatorship era, the State party could envisage discussion of the reservation but its withdrawal was subject to approval by Congress.

33. The reservation to the Second Optional Protocol had been made in view of specific provisions in the Code of Military Justice and the Constitution, under which the death penalty could still be imposed, notably for acts of treason in war time. The forthcoming revision of the Constitution would include that reservation. The death penalty had, however, been withdrawn from the Criminal Code and was therefore not part of the State party's general criminal law. Progress was being made towards full abolition of the death penalty.

34. The Government intended to set up a permanent mechanism to offer redress to persons who had been subjected to torture during the dictatorship. However, the Commission on Political Prisoners and Torture and its successor, the Advisory Commission, had already provided for an extended period in which cases of torture could be reported. New cases of political prisoners who had disappeared or been executed during the dictatorship had thereby been identified. In cases involving crimes against humanity and war crimes, the courts directly applied constitutional law, which covered those crimes, and the Geneva Conventions of 1949. Furthermore, the absence of a law of due obedience in

Chile had made it possible for the justice system to initiate proceedings for crimes against humanity committed during the dictatorship.

35. **Ms. Silva** (Chile) said that her Government was introducing extensive programmes covering issues raised by the Committee and responding to calls from civil society. It was currently considering the decriminalization of abortion in cases of rape, non-development of the foetus and where the life of the mother was at risk. A bill on reproductive rights was also under consideration and would cover access to sexual health education and services. Regarding confidentiality, the Government was committed to a review of the relevant Act, which currently established that documents and testimonies relating to the dictatorship era and entrusted to the authorities should remain confidential for a period of 50 years. The review would include discussions with victims in an effort to build collective memory.

36. **Mr. Quezada** (Chile) said that since 2002 the statute of limitations had been applied predominantly in cases of execution of political prisoners. The statute was rarely applied in cases of enforced disappearance since it was difficult to determine a date for the commission of the crime. The Government acted on behalf of the victims and their families in ensuring non-application of the statute of limitations or amnesty, and in that connection three bills currently before Congress related to the interpretation of the Criminal Code with regard to crimes against humanity.

37. **Ms. Cabellos** (Chile) said that the national plan of action on trafficking in persons had been adopted in December 2013, and aimed at preventing and prosecuting such trafficking and training officials to identify victims and provide them with assistance. A review of migration laws was also under way with the aim of regularizing the situation of victims of trafficking, thereby entitling them to residency and providing access to housing, work and psychosocial services. More data were needed in order to monitor the crime of trafficking in persons and reports had been commissioned in that regard. Awareness of trafficking was also being raised among the general public with a view to prevention and victim identification. Internal trafficking was covered by the Act on trafficking in persons. Budget allocations were made from all governmental ministries involved.

38. The bill on migration and aliens was in its first reading in the Chamber of Deputies. It focused on the protection and integration of migrants, including the employment of migrants, ensuring due legal process, and harmonizing provisions with legislation on refugees and citizenship. Furthermore, the bill envisaged the granting of citizenship to children of migrants by separating that issue from that of the irregular situation of migrants. The Aliens Act currently provided for the confiscation of the identity documents of a migrant worker not in compliance with migration laws as a temporary measure before sanctions were imposed. However, the bill on migration envisaged prohibiting authorities from confiscating migrant workers' identity documents issued in their country of origin. As of March 2013, under a ruling by the Santiago Court of Appeal, the deprivation of freedom of migrants could not exceed 24 hours. In cases where a migrant had appealed against an expulsion order, the law provided that he or she could be detained for up to 5 days and that a decision be taken within that time.

39. **Mr. Muñoz** (Chile) said that the Corps of Carabineros was responsible for ensuring compliance with security regulations. It was a military institution under the law and thus subject to criminal military law. Public demonstrations were not prohibited or punished in the State party. The Carabineros intervened where necessary to maintain public order during unlawful assemblies. The use of force by the Carabineros was regulated by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), which allowed such officials to employ proportional force.

40. **Mr. Yáñez Villegas** (Chile) said that a person could be arrested on the basis of a warrant issued by a judge following an application by the public prosecution service. Upon

arrest, the person's rights were explained and he or she was taken to a police station. The arrest was then verified by the public prosecution service and the Guarantees Court. A person could not be detained for more than 24 hours. The rights read out by the police included the right to see a lawyer. A detainee could also choose a family member with whom to get in touch.

41. **Ms. Labraña** (Chile) said that, since 2005, special arrangements had been in place for children in conflict with the law. Manuals were issued and workshops organized for lawyers, administrative staff and other professionals in order to ensure that the Convention on the Rights of the Child was fully observed. In May 2014, the National Service for Minors had launched a scheme for lawyers to be trained in juvenile justice and the first 20 specialist lawyers would have been trained by the end of the year.

42. With regard to the question about precautionary measures, she said that in 2013 there had been 51,700 criminal proceedings involving children and young people, and precautionary measures had been applied in 1,700 cases, mostly involving repeat offenders or those who had committed serious offences. As of 31 December 2013, 9,701 young offenders had been serving sentences in closed or semi-closed institutions, while 7 per cent had been serving alternative penalties, which marked a new approach to juvenile justice in Chile.

43. Referring to the question of the types of offences committed by young indigenous people, she said that the incidence of offences against property was lower among persons from the Mapuche community, but that of offences against the person, the family or public order was higher. Of sentences currently being served by Mapuches, 398 related to offences against property, 50 to offences against the person, 44 to offences against the family, sexual inviolability and public morality, 25 to drug trafficking and 15 to offences against public order. No one had been convicted under the Counter-Terrorism Act.

44. **Ms. Badilla** (Chile) said that, since July 2013, the Ministry of Justice had been holding a technical round table on establishing a national mechanism for the prevention of torture. The round table would become a standing body, with a full budget, before the end of the term of the current Government and would work to revise the legislation on torture in line with international standards and principles.

45. Replying to the question about prison conditions, she said that in 2013, in response to concerns about disciplinary procedures, new guidelines had been issued on the application of sanctions and on the use of solitary confinement. As a result, there had been a 52 per cent reduction in the number of prisoners held in solitary confinement between 2012 and 2013 — 14,997, as against 28,000 — and the number of days served was also lower. Solitary confinement was used only for very serious offences and only as a last resort. The numbers had declined further in the first half of 2014.

46. As to plans for improving prison conditions in the areas of health, food, lighting and heating, she said that US$ 7.4 million was to be invested. The sum of US$ 44 million had already been allocated to improving infrastructure and security in prisons. The problem of overcrowding would be alleviated by the building of new prisons.

47. **Mr. Alvarez** (Chile) said, with regard to the question of the political will of the State concerning conscientious objection, that the armed forces were manned by volunteers. He recalled that descendants of victims of the dictatorship between 1973 and 1990 were, if they wished to be, exempt from military service. At the same time, the armed forces had to meet the country's defence needs, even though those needs were diminishing. His Government would, however, bear in mind the Committee's comments on the treatment of conscientious objectors.

48. On the question about police violence in the context of social protest by members of the Mapuche community, he said that it was difficult to determine the extent to which the use of force by the police was excessive, given that social protest had intensified since May 2011. However, guidelines on the use of force had been issued and it should be borne in mind that a number of police officers had been convicted of the deaths of protesters by military courts. The Government had announced that it would no longer use the Counter-Terrorism Act in dealing with social protest, especially among the Mapuche community. A committee of experts had been set up to examine the situation and to update the law in line with international human rights standards. The Government's guiding principles were to avoid criminalizing social protest, to respect the principle of legality and to apply the Counter-Terrorism Act only in the case of serious offences.

49. **Ms. Castañeda** (Chile) said, with regard to the question concerning ancestral lands, that the decrease in land purchases between 2010 and 2013 was due to the fact that a review of the purchasing process had been carried out at the end of the previous Government, so no purchases had been made at all in 2010. By the end of 2013, purchases had risen to the average level.

50. **Ms. Silva** (Chile) said that health guidelines relating to transgender persons were currently being drawn up. The Government wished to improve standards, but it had not been in office for long and there was much to do.

51. **Mr. Salvioli** said that he did not concur with the delegation's assessment of the level of repression of social protests. Not only had Ms. Chanet given examples of excessive police violence in her remarks to the delegation but the Human Rights Watch World Report 2013 cited a number of examples and eight States had expressed concern over the use of force in Chile, as was made clear in the report of the Working Group on the Universal Periodic Review (A/HRC/12/10). The problem must be acknowledged before it could be solved.

52. He also differed from the delegation on the question of withdrawing the reservation by Chile to the Second Optional Protocol to the Covenant. According to article 54 of the Chilean Constitution, a reservation could be withdrawn without affecting the ratification of a given treaty. If Congress did not raise an objection within a month, that reservation was tacitly withdrawn. He urged Chile to give further thought to withdrawing its reservation.

53. **Mr. Shany** asked how the rule on a maximum 5-day detention was applied in more complicated cases, such as an application for refugee status, in non-refoulement cases or where a person's documents were not in order. In such cases, it might surely take more time to ascertain a person's identity and the feasibility of expulsion.

54. **Mr. Riveros** (Chile) said that he wished to clarify the situation with regard to withdrawing a reservation. In such cases, approval by Congress was required and the matter was governed by the Congress Organization Act rather than the Constitution. If the two houses of Congress failed to agree within 30 days, a joint commission could decide. Exceptionally, a decision could be made by the Executive, but, even then, that was not possible if the Congress objected.

55. **Ms. Cabellos** (Chile) said that the time frame of 24 hours allowed for detention could be exceeded in cases where a person had submitted an appeal, for example. However, the law stated that an appeal must be heard within five days. If it was not, the person was released. In the case of refugees, the person concerned could not be expelled from the country but must be released within five days. As to the second case mentioned by Mr. Shany, the person would have been identified before being detained.

56. **Mr. Riveros** (Chile) thanked the Committee: its recommendations would help Chile improve its institutions. He also thanked the National Human Rights Institute, which was a

beacon of human rights in Chile, and all the country's other human rights organizations. Human rights could not exist unless they operated within a democracy. That was why Chile aimed to reform the Constitution, in order to create a more inclusive society.

57. **The Chairperson** said that the term "constructive dialogue" was often used euphemistically, but not in the case of the Committee's interaction with Chile. Real progress had been made; and where improvements were needed — such as the review of the electoral system — the delegation had drawn attention to them of its own accord. Abortion was another issue that remained problematic, but a bill currently before the Congress could improve the situation: women were not receptacles for carrying so-called life, regardless of the circumstances in which they had become pregnant. There also remained a residue of police violence, which must be addressed. However, setting standards was one matter and their application was another; progress would come with time. He welcomed the country's commitment to improvement.

The meeting rose at 1.05 p.m.

United Nations CCPR/C/SR.3070

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3070th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of the Sudan

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of the Sudan (CCPR/C/SDN/4, CCPR/C/SDN/Q/4, CCPR/C/SDN/Q/4/Add.1 and HRI/CORE/1/Add.99/Rev.1)

1. *At the invitation of the Chairperson, the delegation of the Sudan took places at the Committee table.*

2. **Ms. Elobied** (Sudan) said that the Sudan had been one of the first countries to apply the right embodied in article 1 of the Covenant by recognizing the outcome of the referendum on self-determination which had led to the independence of South Sudan.

3. **Mr. Abdelgadir** (Sudan) said that the Sudan attached the greatest importance to promoting and protecting human rights. The principles set forth in the Constitution and national laws were fully consistent with the values advocated by international human rights law. The fourth periodic report was the fruit of the extensive consultation of representatives of a wide variety of sectors. It recorded the Sudan's efforts to give effect to the rights protected by the Covenant and the difficulties encountered in that respect. In 2013, the Government, acting in partnership with civil society, had launched the National Action Plan for the Promotion and Protection of Human Rights, the main purpose of which was to foster the teaching and fulfilment of human rights, along with cooperation with regional and international civil society bodies to that end. In order to implement the plan, the Ministry of Justice had appointed a human rights adviser attached to the Ministry of Education, which in turn had set up a specialized committee on instruction in those rights. Civil society organizations likewise played a decisive role in advancing human rights through campaigns to combat harmful traditional practices, such as the Saleema campaign against female genital mutilation. At the legislative level, mention had to be made of the Act against human trafficking, which had been adopted in 2014 and of amendments to asylum law in order to incorporate into it the provisions of the Convention relating to the Status of Refugees. The Criminal Code, the Code of Criminal Procedure, the Personal Status Code and the Electoral Code had been reviewed and the quota of seats in Parliament which were reserved for women had been increased from 25 to 30 per cent. At the institutional level, several bodies, including a National Human Rights Commission, had been established in order to ensure the compatibility of State action with international human rights standards. The Constitutional Court also played a substantial role in promoting and protecting human rights by expounding in its case law principles based on international human rights law, which all courts were then bound to apply.

4. The drafting of a permanent constitution for the Sudan was a Government priority. A committee had been set up to coordinate work in that field and public consultations involving numerous stakeholders had been held in all the States of the country. The restoration of peace, security and stability was a precondition for the realization of human rights. To that end, the President of the Republic had launched a round of national consultations open to all on a wide range of issues, such as the promotion of freedoms, economic reform, poverty reduction and the strengthening of a national identity. The Sudan was determined to combat the threats to the peace and security of its population from certain armed groups in the pay of foreign powers. It firmly believed in the virtues of dialogue and hoped that, with the assistance of the international community, it would manage to persuade the rebel groups to come to the negotiating table. It cooperated without reservations with regional mechanisms monitoring the Comprehensive Peace Agreement and, in accordance with the express instructions of the President of the Republic, it had received a large number of refugees fleeing the fighting and had offered them protection in its territory.

5. **Ms. Mubarak** (Sudan), summarizing the written replies to the list of issues, said that the fifth periodic report of the Sudan would contain a detailed account of action under the National Action Plan for the Promotion and Protection of Human Rights which had been launched in June 2013. Complaints against law enforcement officers were always duly examined. Those officers' immunities were procedural in nature and varied according to the seriousness of the breaches committed. That issue had been examined in 2013 at a workshop, held with the support of the United Nations Development Programme (UNDP), which had produced some recommendations the follow-up to which had been entrusted to a committee under the supervision of the prosecution service. Numerous steps had been taken to apply the Doha Document for Peace in Darfur, in particular at the institutional level, with the setting up of the Office of the Special Public Prosecutor for the Special Courts for Darfur, which was responsible for investigating all alleged breaches linked to the conflict and of the Truth, Justice and Reconciliation Commission. The unlawful activities of armed groups were, however, still impeding the peace process. The Government was continuing its efforts to persuade those armed groups to disarm and it relied on the international community's help to achieve that goal. It also hoped that the pledges given at the International Donor Conference for Reconstruction and Development in Darfur would be honoured. The Government was endeavouring to encourage the resettlement of displaced persons in new villages, or their voluntary return to their original village and to provide them with access to essential services. That was an arduous task because of the Sudan's financial plight and the impact of economic sanctions imposed on it, but that strategy, which had been welcomed by the United Nations, had already made it possible to build over 20 villages and to facilitate the seasonal return of some displaced person in order that they might engage in farming during the rainy season. In the Sudan a state of emergency could be declared only by the highest authorities of the State and solely in the event of a direct threat against the country. It did not breach fundamental rights in any way and was therefore compatible with article 4 of the Covenant. A state of emergency was in force in the States of South Kordofan and Blue Nile owing to the conflicts there.

6. Many women held senior posts in the public sphere. The reform of the Electoral Act had increased women's representation in Parliament. The Government had introduced a national policy to further girls' education and programmes to promote women's empowerment, especially in rural areas. The Sudan was mainly a Muslim country, but other religions were respected and all lived peacefully side by side. Trafficking and servitude were prohibited by the 2005 Constitution and an act specifically banning trafficking had been adopted a year earlier. A committee to combat the kidnapping of women and children had been set up in an attempt to halt that practice. Freedom of association was guaranteed by the Constitution and by law, but the lawfulness and financing of associations had to be checked prior to their founding. Freedom of expression was guaranteed by the Constitution and any statutory limitations on the exercise of that right were consistent with the provisions of the Covenant. On several occasions the Constitutional Court had enforced the right to freedom of expression by quashing decisions which had sought to muzzle the press.

7. **The Chairperson** invited Committee members who so wished to put questions to the delegation.

8. **Mr. Neuman** (Country Rapporteur) thanked the State party for sending the Committee the text of the National Action Plan for the Promotion and Protection of Human Rights, but he regretted that it had not provided more information on progress achieved since that plan had been launched. He requested details of the terms of reference of the National Human Rights Commission and of its activities and of the resources allocated to it. He wished to know whether it had already made any recommendations to the Government and, if so, what action had been taken on them.

9. He asked the delegation to explain in detail how the National Action Plan for the Protection of Human Rights was applied and what results it had produced. It was regrettable that the State party had not provided any information about the achievements of the National Human Rights Commission which had been set up in 2012 or indicated whether that body had made any recommendations to the Sudanese authorities. The Commission had not applied for accreditation with the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights, with the result that it had been impossible to assess its compliance with the Principles relating to the Status of National Institutions (the Paris Principles). The Commission had not supplied the Committee with any information ahead of the dialogue with the State party. He therefore asked the delegation for information regarding the measures taken to give the Commission sufficient human and financial resources. Since Sudan had ratified the Covenant without entering any reservations, the provisional Constitution of 2005 and the new Constitution had to be fully compatible with the Covenant's provisions and he wished to know what measures had been adopted to ensure that they were. He was also eager to know what had been done to ensure that the process of revising the Constitution had been accompanied by a dialogue with all the strands of political thought.

10. He invited the delegation to comment on the opinion expressed by the Independent Expert on the situation of human rights in the Sudan in his 2013 report (A/HRC/24/31) that the impunity of the security forces remained a recurrent problem. As in its written replies to the list of issues the State party had failed to supply any information about cases being heard by civilian or military courts in which law enforcement officers or members of the armed or security forces stood accused of crimes against humanity, war crimes or genocide, he wished to know if that meant that no one was being prosecuted for that kind of crime. He invited the delegation to explain how the fact that the police, armed and security forces could stymie the prosecution of their members who had committed serious human rights violations could be consistent with the provisions of the Covenant. The delegation might also wish to comment on allegations of sluggishness on the part of the Office of the Special Public Prosecutor for the Special Courts on Darfur which had passed few sentences. Impunity would continue to reign in Darfur and would encourage the commission of further breaches of human rights. Lastly, he asked what the State party was doing to assist the Office of the Special Public Prosecutor to bolster accountability and cooperate with international mechanisms which could help in that sphere.

11. **Mr. Kälin** enquired as to the steps being taken by the Government effectively to protect civilians from forced displacement during the armed conflict, for example by informing the armed forces of the prohibition on the forced displacement of populations and by giving them the requisite training to avoid combat tactics entailing such displacement. Turning to the resettlement of displaced persons in host communities rather than in camps, he wondered what methods were used to identify, protect and assist displaced persons outside camps. He also wished to know whether the Sudan was contemplating the ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention). As for the situation of refugees in the Sudan, he asked the delegation to comment on allegations that the principle of non-refoulement had not always been respected, especially with regard to Eritrean asylum seekers and refugees. He referred to a statement of the United Nations High Commissioner for Refugees who had drawn attention to the case of 74 Eritreans who had been sent back to their country of origin in July 2014 without being given access to the existing asylum procedures.

12. With regard to allegations that serious violations of human rights had been committed by government forces and pro-government armed groups, inter alia in the States of Darfur, South Kordofan and Blue Nile, he asked for a detailed account of the way in which the provisions of the National Security Act, which granted immunity to members of

the National Intelligence and Security Service, were applied. Since the figures supplied in the State party's written replies with regard to the number of cases processed by the Office of the Special Public Prosecutor for the Special Courts for Darfur and the number of sentences passed by the Courts were identical to those given by the Independent Expert on the situation of human rights in the Sudan in his 2013 report, he wished to know whether that meant that, since that date, the Office of the Special Public Prosecutor had not considered any new cases, or conducted any new investigations and that the Courts had not handed down any further sentences.

13. The delegation was invited to say whether, in view of the conditions imposed by the State party on the implementation of the 2012 Tripartite Agreement, neutral parties could deliver humanitarian assistance to persons affected by the conflicts in the States of Darfur, South Kordofan and Blue Nile, even in areas under rebel control. It was also asked to comment on information that access to areas controlled by the Sudan People's Liberation Army/Movement (SPLA/M) was restricted, or even impossible. If humanitarian assistance could reach areas not controlled by the Government, details of the conditions governing access would be welcome.

14. **Mr. Bouzid** asked whether all regions of Darfur, South Kordofan and Blue Nile were under states of emergency and on what date that measure had been adopted for each region. He also wished to know if each of the decrees establishing the state of emergency and the renewal of those measures had been approved by Parliament and whether the President of the Republic had been consulted and also whether the Secretary-General of the United Nations had been informed that recourse was being had to the right of derogation under article 4, paragraph 3, of the Covenant. The delegation was asked to comment on information to the effect that the implementation of the state of emergency and the ensuing restrictions on liberty of movement had prevented many Sudanese citizens from registering on the electoral roll and taking part in elections.

15. He also asked what amendments would be made to legislation in order to eliminate discrimination against women, whether NGOs were associated in that process and whether a date had been set for the presentation of the draft amendment in Parliament. He also wished to know if article 152 of the 1991 Criminal Code concerning indecent conduct and clothing was applied in the same way to men and women, irrespective of their religion and if the State party was contemplating the adoption of an anti-discrimination Act. In addition, the delegation was asked to comment on allegations that flogging was still used as a punishment in some regions of the Sudan. It might also wish to give some details regarding the application of the death sentence, especially to minors and when confessions had been obtained by torture, and to say whether the Sudan was intending to adopt a moratorium on the death sentence or to shorten the list of crimes entailing capital punishment.

16. **Ms. Waterval** asked the delegation to supply the precise number of women in the National Assembly, the judiciary and the executive branch of Government. She asked it for a detailed account of the outcome of the national policies for women's empowerment and girls' education and the effect of measures for women's advancement which the State party had undertaken to adopt in paragraph 174 of its report.

17. **Ms. Seibert-Fohr** asked the delegation to describe the measures taken to prevent violence against women and to prosecute the perpetrators, including law enforcement officers. As the provisions of the Criminal Code that were deemed to protect women were inadequate, she asked what legislative measures had been adopted in order to amend articles 145 and 149 of the 1991 Criminal Code concerning adultery and rape. She invited the delegation to say whether it was true that rape continued to be treated as adultery and that persons who forced their spouse to engage in sexual relations were not accused of conjugal rape. The delegation might also wish to say if it was true that the Criminal Code did not regard domestic violence as a crime and whether the authorities registered the

complaints of women who had been victims of violence. She asked the delegation to provide the Committee with the text of the legal provisions prohibiting female genital mutilation in the States of North Kordofan, South Darfur, Red Sea and Al Qadarif and to say how many people had been prosecuted under those provisions. Why had no national law prohibiting female genital mutilation in all circumstances been adopted? What had been done to enable the gathering of high-quality data on the outcome of the national strategy for the elimination of female genital mutilation in the Sudan (2008–2018) and to analyse that data?

18. **The Chairperson** decided briefly to suspend the session to enable the delegation of the Sudan to prepare its replies to the questions put by Committee members.

The meeting was suspended at 4.55 and resumed at 5.10 p.m.

19. **Mr. Tungo** (Sudan) said that, although the National Action Plan for the Promotion and Protection of Human Rights had been launched in June 2013, its effective implementation had started at the beginning of 2014. In the intervening period, a technical committee responsible for the plan's application and a higher level monitoring committee had been set up. Human rights education was of prime importance to the Government. Under the guidance of the Ministry of Education human rights courses had been included in school and university curricula. In addition, all the reports which the Sudan submitted to the treaty bodies of the United Nations, including the report under consideration, were disseminated free of charge throughout the country and copies were distributed to university libraries and civil society organizations. Workshops on subjects related to human rights and awareness-raising campaigns had been run for law enforcement officials. The Advisory Council on Human Rights had held several seminars in various regions, with UNDP support, in order to consult the population on the drafting of the future Constitution.

20. Some 60 cases concerning breaches of human rights in Darfur had been tried and about 40 other cases of that kind were pending. In 15 of the cases examined by the courts, 30 of the 70 suspects had been members of armed groups and 27 had received the death sentence. Twelve of the persons convicted were members of the regular army of the Sudan. In 2013, the courts had passed 227 death sentences. Ten of them had been carried out, 86 were pending and 30 were under review. In accordance with the law, death sentences were automatically reviewed by a higher court and were carried out only after all domestic remedies had been exhausted. In order to prevent the death sentence being applied to minors, the Sudanese authorities, acting in cooperation with regional and international organizations, strove to determine the exact age of persons who had been sentenced to death, for errors in recording date of birth were frequent. In response to a resolution of the African Commission on Human and Peoples' Rights, the Sudanese authorities had undertaken not to execute any minor who had been sentenced to death.

21. It was impossible to verify many allegations regarding enforced disappearance, murder and torture since the identity of the presumed victims could not be established, above all because some of them had a very common name. The Sudanese authorities had repeatedly asked for additional information on those allegations, but to no avail. Rebel groups were chiefly responsible for extrajudicial executions. Assertions that the regular army had killed innocent people at Abu Karshola were groundless. All extrajudicial executions of which agents of the State were accused formed the subject of an inquiry and, if appropriate, gave rise to punishment.

22. **Mr. Eltahir** (Sudan) said that immunity from prosecution was granted to some categories of officials who performed particular duties, but such protection was not immutable. Sudanese case law showed that there had been instances in which agents of the State had been stripped of their immunity, tried and given prison, or even death sentences.

23. **Mr. Musa** (Sudan) said that an agreement authorizing the National Human Rights Commission to register refugees and issue them with a birth certificate had been signed with the Office of the United Nations High Commissioner for Refugees (UNHCR). The Sudan had some 6,000 registered refugees, more than 7,500 asylum seekers and 200 persons for whom the UNHCR was responsible. Allegations that the Sudan did not respect the principle of non-refoulement were unfounded. A number of Eritrean refugees who had arrived in the Sudan had identity documents showing that they had obtained refugee status in Ethiopia. That was the reason why they could not apply for asylum in the Sudan. The Sudanese Government had contacted the UNHCR office in Khartoum to find out why those refugees had fled from the camps where they had been living previously. The situation in the camps taking in persons who had been displaced in the wake of the Darfur crisis had improved considerably as far as access to basic services was concerned. The authorities were planning to build 1,000 housing units for displaced persons from Darfur who wished to go home. In addition, refugee camps and villages had been built with the support of Qatar in several regions of Darfur. The World Food Programme offered assistance to displaced persons who resettled in Darfur and in the Blue Nile region. It had not been possible to mount children's vaccination campaigns in areas under the control of armed groups, because those groups barred access to them. Lastly, 7,000 refugees had returned voluntarily to Ethiopia, where they received assistance from the international community.

24. **Mr. Abdelgadir** (Sudan) said that, as explained in the report and written replies, a state of emergency was declared only in the event of imminent danger and in accordance with the relevant provisions of the Constitution. The Sudan called on the Committee and the international community not only to help it to allay the tensions which forced it to declare a state of emergency, but also to bring pressure to bear on rebel groups to persuade them to come to the negotiating table. A state of emergency was currently in force in Blue Nile and the five States of Darfur. The declaration of a state of emergency did not result in the restriction or suspension of the right to participate in elections or of the freedom of movement. The poor participation of some groups in the elections was due to the fact that it was necessary to have been resident in a region for at least three months in order to be able to register on the electoral roll. That situation deprived nomads of the possibility of voting and being elected. An Act had been drafted to solve that problem.

25. The main purpose of article 152 of the Criminal Code was to suppress objectionable conduct. The manner in which a woman dressed did not come within the purview of that article unless her attire was unseemly, which was a matter for the courts to decide.

26. **Ms. Mustafa** (Sudan) said that in 2007 the Sudan had adopted a national policy on women's advancement. The interim Constitution adopted in 2005 gave women more rights and provided for the introduction of affirmative action to encourage their participation in public life. In the elections held in 2010 women had won 26 per cent of the seats in Parliament, a percentage slightly higher than the 25 per cent quota set in the Electoral Act. Ten parliamentary committees were chaired by women. Legislation also required that at least 25 per cent of judicial officers must be women. The country currently had 96 women members of the national legal service, 1 of whom was a member of the Constitutional Court. The Ministry of Education had adopted a high-level strategy to further girls' education, the aim of which was to overcome the disparity between the number of boys and girls enrolled in school. In large towns, 90 per cent of girls attended primary and secondary schools and 65 per cent of girls continued their studies at a higher educational establishment. In 2004, after the crisis in Darfur, in response to the violence which had been done to women in that context, several committees had been set up with the support of the African Union and United Nations bodies in order to implement a plan to combat violence against women and to speed up proceedings against the alleged offenders. The Ministry of Justice had published a decree granting women the right to file a complaint in order that the perpetrators did not go unpunished. It had also set up a group of women who

visited refugee camps in order to encourage women who had been the victims of such violence to lodge complaints. In 2007 the authorities had published a decree guaranteeing the right of women to bring a case before the courts up until five years after the acts.

27. **The Chairperson** thanked the delegation for its replies and invited it to continue giving them at the following meeting.

The meeting rose at 6.05 p.m.

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Summary record of the 3071st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 9 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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Fourth periodic report of the Sudan (continued)

This record is subject to correction.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of the Sudan (continued) (CCPR/C/SDN/4; CCPR/C/SDN/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Sudan took places at the Committee table.*

2. **Ms. Mustafa** (Sudan) said that a comprehensive review had been carried out of all enactments relating to women, including the Criminal Code, the Personal Status Act and the Labour Code. As a result, two draft revised articles of the Criminal Code on adultery and rape had been submitted to parliament and were awaiting a decision.

3. There was no discrimination against women in the Sudan, and the Bill of Rights contained in the Constitution established that all rights were enjoyed equally, regardless of gender, ethnicity or religion. The Bill of Rights also provided for affirmative action in favour of women in the workplace. A national strategy for women's empowerment had been developed to give effect to the equality provisions of the Constitution in all sectors of economic activity.

4. The allegations of rape in Darfur reported to the Human Rights Council had been examined, and it had emerged that no cases of rape had actually been reported in the camps in West or North Darfur. The source of the information was therefore unclear. In order for the necessary protection, including emergency contraceptives, to be provided in such cases, it was important that rapes were reported directly where they actually took place.

5. On the issue of female genital mutilation (FGM), she recalled that the State party had enacted the first law on the practice in 1946 and that the Criminal Code of 1973 also contained provisions prohibiting it. A change of mentality was required in order to put an end to customary practices such as FGM. The Salima awareness-raising campaign had been run throughout the country — reaching more than 1.6 million people — with the objective of significantly decreasing the incidence of FGM. There was a database of registered FGM cases in several states. The National Council for Child Welfare had requested the amendment of the Children's Act in order to combat the practice.

6. **Mr. Morowa Musa** (Sudan) said that the number of returnees from the camps in Darfur had increased in 2013 and 2014, and they were provided with the necessary assistance, including food and basic services. However, many challenges remained in Darfur, and there were still more than 1.8 million displaced persons in the region's five states. Concerted efforts were required from all stakeholders, including government, civil society, and international and community organizations. The contractual relationship between the Government and humanitarian workers had been clarified with a view to facilitating their work, strengthening transparency and accountability, and controlling the assistance provided. The World Food Programme had provided food aid while the Office of the United Nations High Commissioner for Refugees had provided non-food items. The State of Qatar had established a centre for returnees, providing health, food and policing services. The Government had also signed an agreement with the League of Arab States, the African Union and the United Nations to channel relief operations to the southern part, but rebel movements were hindering efforts. The United Nations Children's Fund (UNICEF) had also been prevented from running its immunization programme because of rebels blocking access.

7. **Mr. Kälin**, noting the increasing food insecurity in certain areas, asked whether, as a matter of principle, the Government of the Sudan allowed humanitarian aid, especially food

aid, to be brought to areas controlled by rebels, and, if so, under what conditions. Referring to the recent incident involving the return of Eritrean refugees who had come from camps in Ethiopia, he asked why they had been sent back to Eritrea rather than Ethiopia.

8. **Mr. Neuman** asked the delegation to provide a response to question 10 of the list of issues concerning non-discrimination. With regard to the allegations of violations that were believed to be unfounded, he wondered whether the State party would be willing to ratify the Optional Protocol to the Covenant in order to address concerns of that kind by enabling individuals to submit complaints to the Committee.

9. **Mr. Salvioli** said that he would welcome clarification on the issue of the death penalty. He recalled that, despite the Committee having expressed concern that Sudanese legislation in that area was incompatible with the provisions of the Covenant during its consideration of the State party's previous two reports in 2009 and 1997, the relevant provisions had not been amended. It did not appear that, as stated by the delegation, the death penalty applied only to the most serious crimes. The lists of crimes to which the death penalty applied differed in the replies to the list of issues and the State party report, and some crimes had not been mentioned in either. The issue was of the utmost seriousness, as the provisions of article 6 of the Covenant were non-derogable, and the State party must take into account the Committee's concluding observations when amending its legislation.

10. **The Chairperson**, speaking as a member of the Committee, shared Mr. Salvioli's concerns about the lack of clarity surrounding which offences were punishable by death. For example, there was no reference in the report or replies to the list of issues to apostasy being a capital offence, yet in a recent high-profile case Ms. Meriam Ibrahim had been sentenced to death for apostasy and subsequently acquitted. He asked why the State party had not included apostasy among the capital crimes listed in its documentation. If it was not actually a capital crime, on what basis had the court condemned the woman in question to death?

11. **Mr. Ben Achour**, referring to question 16 of the list of issues, noted that, although the crime of torture was included in a number of Sudanese laws, none of them provided a clear and precise definition of the crime. According to reports received by the Committee from various non-governmental organizations (NGOs), the use of torture against political opponents and protesters by the security forces was widespread. For example, following a demonstration in September 2013, a number of people had been injured and killed by the security forces in violation of article 7 of the Covenant. The Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Rights of Women of the African Commission on Human and Peoples' Rights had also expressed grave concerns in that regard. In a recent communication, the African Commission on Human and Peoples' Rights had also found the Sudan to be in violation of the African Charter on Human and Peoples' Rights on the grounds of torture. He would be interested to hear the delegation's comments on those points.

12. Referring to question 17 of the list of issues, he said that many of the statistics provided by the State party were not relevant to the issue at hand. As to question 18, he said the argument that forms of punishment that were in breach of articles 7 and 10 of the Covenant, such as flogging and amputation, stemmed from the national belief and creed was not acceptable. By ratifying the Covenant, the State party had undertaken to change cultural or traditional practices that were in violation of the human rights provided for in the Covenant. He cited the example of a number of Islamic States that had amended their national legislation to bring it in line with the Covenant, with the support of their religious leaders. He invited the delegation to comment on why the State party continued to make such a narrow interpretation of sharia law.

13. Turning to question 20 of the list of issues, he said that while the 2010 National Security Act no doubt contained some improvements in the context of articles 9, 10 and 14 of the Covenant, the period of detention permitted under the Act went far beyond the 30 days provided for under international human rights law and the Committee's general comment. He asked the delegation to comment on reports that the families of persons injured during the incidents of September 2013 had not been able to obtain the documents needed in order to open an investigation, and that a number of persons had been sentenced to death under the Act.

14. **Mr. Kälin**, referring to question 19, asked what measures had been taken to implement the Committee's recommendation in the previous concluding observations about combating the practice of abduction. He wished to know what resources were made available to the Committee for the Elimination of Abduction of Women and Children, what kind of assistance was provided to victims to help them reintegrate into their families and communities, and in how many cases such assistance had been provided. Noting that, according to reports from NGOs, there continued to be cases of kidnapping of refugees and asylum seekers and insecurity in refugee camps and other locations, he would welcome updated information on measures being taken by the authorities to enhance protection of those groups.

15. **Mr. Neuman** said that, in its written replies, the delegation had not answered the question about the trials of civilians by military and special courts during the reporting period. He asked whether it was the case that, under the amendments made to the Armed Forces Act in 2013, military courts were permitted to try civilians under the 1991 Criminal Code for undermining the constitutional system, leaking classified information and publishing false news. The implication that journalists could be tried on such grounds ran counter to the Sudan's obligations under the Covenant.

16. **Mr. Boujid** said that the delegation had not provided a complete list of offences that were punishable by death. It was encouraging that the delegation had said that no measures had been implemented in cases of apostasy, which he took to mean that the death penalty had not been applied. Even under sharia law, many thought that religion was a personal choice, between a believer and the Creator, in which the State had no role. However, despite the delegation's statement that the rights of non-Muslims were fully respected, the fact that a young mother of two children had been sentenced to hang for apostasy and — because she was married to a Christian — for adultery showed that that was not the case. He asked whether legal proceedings against her had been completed. Moreover, since the secession of South Sudan, the Sudanese authorities had been less tolerant towards Christian communities. In January 2014, for example, students had been driven from their Christian school and three other Christian educational institutions had been closed and their premises sequestrated. He requested the delegation's comments.

17. **Ms. Seibert-Fohr** requested the delegation to reply to her earlier question concerning articles 145 and 149 of the Criminal Code. She also asked for a copy of the 1973 Criminal Code, which the delegation had said criminalized female genital mutilation.

18. With regard to freedom of expression, she noted that, in a number of cases, newspapers' licences had been cancelled or their publication suspended for days on end. Even if such decisions were later overturned by the courts, the repeated use of such measures could have a chilling effect on free speech. Moreover, journalists had been arrested and prosecuted for publishing "false news", especially in relation to anti-Government protests. The Government sought to justify such suppression in the interests of protecting national security and public order. Any action taken must, however, be proportionate, as stated in the Committee's general comment No. 34 on freedoms of opinion and expression. Attacks on journalists were never justified, although, judging by

paragraphs 154 and 155 of the fourth periodic report, journalists themselves were deemed a threat to free speech by the Government of the Sudan.

19. In June to August 2012 and September 2013, excessive force had been used to disperse demonstrators, of whom 60 had been killed and hundreds arrested and sometimes tortured or ill-treated. So far as she could tell, there had been no investigation into the deaths, the focus being entirely on damage to property. She therefore requested further details. Lastly, although the President had announced an easing of restrictions on opposition and media activities in April 2014, it appeared that articles 7, 9, 14, 15 and 19 to 21 of the Voluntary and Humanitarian Work Regulation Act were used to ban events organized by civil society groups and human rights defenders.

20. **Ms. Waterval** said, with regard to question 27 of the list of issues, that, according to information received by the Committee, formal and informal fees were charged for birth registration and fines were imposed for late registration. Moreover, birth registration remained a challenge in remote areas. She asked whether birth registration was available for South Sudanese children, who might not be considered to be refugees, abandoned children, victims of trafficking or street children. She also asked whether the State party would allocate resources for birth registration in remote areas, grant access to the United Nations to carry out age verification during military enlistment, and provide relief and reintegration for children involved in armed conflict. With regard to minority rights, she welcomed the recent announcement that South Sudanese would be treated equally with Sudanese citizens but requested the delegation to comment on reports that persons of South Sudanese origin were discriminated against and harassed.

21. **Mr. Zlătescu** said that, for hundreds of years, African farmers and Arab nomads had lived side by side, respecting each other's needs. Desertification had caused tensions, but the Sudanese Government seemed to have intentionally exacerbated such tensions in order to dissipate opposition to central rule. The Government's strategy had impelled nomadic Arab peoples to form militias, probably supported by the Government, that targeted African ethnic groups. In response, the Fur, Masalit and Zaghawa ethnic groups had begun to form their own militias. Despite the Comprehensive Peace Agreement of 2005, reports showed that restiveness had increased across the Sudan. The Darfur uprising of 2005 had provoked severe retaliatory action by the Government and the Janjaweed militias, resulting in innumerable deaths and widespread displacement. Against that background, he asked how the Comprehensive Peace Agreement had been implemented with regard to the status of local minorities and how the Sudan would avoid another uprising in the region.

22. Another potential crisis had been identified in the Nubia mountains, as the Sudanese Government had developed dam-building projects on the traditional lands of the Nubian and Manasir populations. Many feared that the Government's plans were explicitly intended to put an end to their ancient customs. There were many other possible causes of conflict, since the Sudan comprised more than 600 ethnic minorities, many of them displaced by war and famine. The tensions were political and economic rather than racial, but there was also a clear ethnic aspect. He therefore asked how the Government intended to protect diverse ways of life and prevent the disappearance of traditions and languages that did not conform to the beliefs of the majority. He wondered whether the recourse to sharia allowed room for plurality and whether non-Muslim populations in the Sudan could be offered a guarantee against suspicion of apostasy.

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

23. **Mr. Musa** (Sudan) said, with regard to the provision of humanitarian aid in areas controlled by rebels, that, on the basis of an agreement signed by his Government, the Arab League, the African Union and the United Nations, there was nothing to prevent such aid being provided. As to the expulsion of refugees, the persons concerned were not considered

refugees, so that their refugee documentation was no longer valid. Once their visas had expired, they were arrested and returned to the Eritrean border.

24. **Mr. Abdelgadir** (Sudan) said that the interim Constitution prohibited all forms of discrimination, so all the country's legislation was required to comply with that provision. It was therefore doubtful whether it was useful to consider consolidating the prohibition of torture in a single law. The Sudanese legislature had preferred to adopt separate laws, which addressed different forms of torture. Thus, if a victim died under torture, the penalty was death for the perpetrator, whereas the penalty was lighter for less extreme forms of torture.

25. The Sudan had nothing to hide: if all offences punishable by death did not appear on the list already provided, his delegation would rectify any omissions. Among those offences was apostasy, a very serious offence in the Sudan. Standardized values and principles throughout the world were surely undesirable. In that connection, Mr. Ben Achour had talked about the incidence of amputation and flogging in the Sudan. He understood the point but questioned whether the Covenant should really take precedence over the State party's beliefs and religion. He also questioned whether an innovative, reformist approach was preferable to the certainties of sharia. However, sharia was a broad-based system and, if it was possible to be flexible, the Government would opt for flexibility.

26. The Sudan was currently considering whether to sign the two Optional Protocols to the Covenant. It had signed the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment and was considering its ratification. In that connection, he failed to see the connection between arbitrary arrest and torture. He added that a confession extracted by torture was not accepted as evidence by the courts.

27. **Mr. Eltahir** (Sudan) said that deprivation of liberty was the longest established way of preventing crime and ensuring public order. Governments all over the world followed that practice, one example being a law in the United Kingdom that provided for preventive measures in certain cases against persons suspected of terrorist acts. The Sudan aimed to protect its citizens against armed raids, racist practices and terrorism by detaining possible perpetrators. Moreover, by contrast with other countries, the duration of such detention was clear from the outset and in conformity with articles 9, 10 and 14 of the Covenant. A detention was overseen by the public prosecution service throughout its duration and security officials were required to provide detainees with documents requesting any extension of their detention. If they failed to do so, the detainee concerned must be released immediately. The system was further bolstered by other oversight mechanisms, such as the courts, the National Security Council, the Ombudsman, the Human Rights Commission and the military courts.

28. **Mr. Tungo** (Sudan) said, with regard to the abduction of women and children in conflict areas, that a commission set up by the Government and the United Nations had considered all the facts and submitted a report to the relevant authorities, before being wound up six years previously. The commission had enabled some families to be reunited and had provided such families with financial and social assistance and health care.

29. **Mr. Musa** (Sudan) said that there had been an influx of refugees from Eritrea, Somalia and Ethiopia into the Sudan, many seeking refuge in Shagarab camp. The State party was a transit country for many refugees whose final destinations were Egypt, Israel and Italy, and organized trafficking networks operated on those routes, especially in the Sinai desert leading towards Israel. A conference would be held to address the problem at regional level. Security in Shagarab had been improved to prevent abductions of refugees by traffickers; support for victims of trafficking, including food and medical care, had been increased; and services had been enhanced to prevent refugees from seeking better living conditions outside the camp; which exposed them to further risk. The rate of abductions of

refugees and asylum seekers had accordingly declined, with 40 cases reported between January and June 2014. The Sudanese police assisted in locating and removing victims from trafficking networks, and prosecuting traffickers. Furthermore, a law against trafficking in persons would enter into force in March 2015 and another to prevent the refoulement of refugees without documentation and the confiscation of property in the camps had already been introduced.

30. **Mr. Eltahir** (Sudan) said that persons suspected of committing crimes in conjunction with military personnel could be tried in military courts. Those courts had restrictions on their powers, respected constitutional law, and ensured that non-military persons enjoyed the same rights as in the civilian courts. There had been no reports of journalists coming before the military courts and no provision authorized such proceedings.

31. **Mr. Abdelgadir** (Sudan) added that non-military persons tried in military courts could not be considered civilians since they appeared as members of a militia or an armed paramilitary group.

32. His Government rejected all forms of discrimination and would bring its legislation into line with the Covenant where necessary on that matter. While sharia was never applied to non-Muslims in the State party, the vast majority of the population was Muslim and therefore subject to Islamic norms. The laws in force for other members of the population depended on the region in which they lived. The rare individual cases of women charged with apostasy had given rise to the false notion of a phenomenon of apostasy convictions and intolerance of Christians. The case of Mariam Yahya Ibrahim was not directly linked to apostasy. She had been tried and convicted for marrying a non-Muslim. However, during the course of the proceedings she had declared she was a Christian and the verdict had therefore been overturned by the court of appeal. Statistics were available regarding the numbers of practising Christians in the State party; they had free access to churches and could perform services.

33. Freedom of expression was guaranteed under the Constitution and regulated through legislation on the press, which consisted of a large number of newspapers and social media and was not subject to censorship. However, if offences were committed, such as defamation or dissemination of false news, the perpetrators were brought before the courts and duly prosecuted.

34. The events of September 2013 had not constituted peaceful demonstrations but rather an attempt at political sabotage by rebel organizations which had publicized their plans through the press. Reports had established that private and public property had been damaged and people had been killed, including law enforcement officials; all cases had been investigated. Protesters who had been found innocent had been released immediately, and the courts had very recently released further detainees. Those found guilty had been detained and had access to due legal process.

35. **Ms. Mahmoud** (Sudan) said that children were protected under the Children's Act of 2010, which covered children from vulnerable groups and street children. A national plan was being drawn up to promote birth registration, which was free of charge in most regions. Her Government was making efforts to guarantee free birth certificates nationwide. A strategy had also been developed with a view to increasing registration to cover 90 per cent of births, which included the introduction of registration via mobile phone and the engagement of itinerant health personnel.

36. A programme had been established by the Sudan Disarmament, Demobilization and Reintegration Commission to demobilize children from armed groups and reintegrate them into their families; thousands of children had thereby been demobilized. Mechanisms were in place to provide training on the rights of children, prevent enlistment and create protection systems.

37. The Government continued to combat female genital mutilation through the development of a protection and monitoring mechanism.

38. **Mr. Abdelgadir** (Sudan) said that there were no minority groups in the Sudan since members of different ethnic groups, often with the same religion, intermarried and lived together, creating a unified tolerant society. In any case, the law provided protection for the rights of non-Muslims.

39. **Mr. Ben Achour** said that the religion of Islam and sharia were separate concepts: the former involved worship while the latter was a law that had been evolving over hundreds of years, which was in the nature of all law. It was of the utmost importance that Islam should enjoy a good reputation throughout the world and matters such as apostasy and excessive punishment were therefore not in the interests of Islam.

40. **Mr. Salvioli** emphasized that the Committee had compiled the 1997 and 2007 concluding observations on the Sudan in line with general comment No. 6, taking into account case law on the death penalty from around the world. Committee members did not represent individual countries or legal systems. It was disturbing that religious freedom was used as a ground for the non-alignment of domestic legislation with the Covenant. While article 18 provided for religious freedom, no article allowed the contravention of the Covenant on grounds of religion. Under general comment No. 31, States parties were required to harmonize their domestic legislation with the Covenant.

41. **Mr. Abdelgadir** (Sudan) said that his Government would make every effort to ensure that its legislation was in line with the Covenant. While the Government was open to discussion regarding sharia law, the fact remained that sharia enshrined the principles of Islam and did not run counter to the Covenant. The distinction between sharia and the religion of Islam was therefore perplexing. The State party was making progress in guaranteeing freedom of expression.

42. **The Chairperson**, speaking as a member of the Committee, acknowledged the way in which the State party had coped with the seismic change brought about by the secession of South Sudan, which had amounted to exercise of the right to self-determination.

43. The issues of the death penalty and other cruel punishments had been central to the discussions and were connected to religion. The Committee's objective did not lie in interpreting sharia but rather in considering the application of national law. In the light of article 6 of the Covenant, which stipulated that the death penalty could be imposed only for the most serious crimes and not contrary to the provisions of the Covenant, the Committee could not accept that the definition of serious crimes could be determined by individual States. It was also unacceptable to consider apostasy a criminal offence, much less a capital offence, since it was incompatible with the right to freedom of religion. The application of corporal punishment also required conformity with an objective standard. Furthermore, extracting testimony under torture and excessive periods of executive detention without judicial supervision were not in line with practices in most other parts of the world or with the Covenant, and the concerns of the Committee on those matters had not been alleviated. The issues raised in 1997 and 2007 remained, and it was therefore frustrating that the State party pursued the same policies. He hoped that the delegation would take the Committee's comments into account.

The meeting rose at 1.15 p.m.

United Nations CCPR/C/SR.3072

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3072nd meeting
Held at the Palais Wilson, Geneva, on Wednesday, 9 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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Initial report of Malawi

This record is subject to correction.

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Malawi (CCPR/C/MWI/1, CCPR/C/MWI/Q/1/Add.1 and 2 and HRI/CORE/MWI/2012)

1. *At the invitation of the Chairperson, the delegation of Malawi took places at the Committee table.*

2. **Ms. Banda** (Malawi) said that Malawi welcomed the opportunity to continue the dialogue it had embarked upon with the Committee in 2011, when the Committee had considered the situation in the country in the absence of a report. The initial report and the written replies to the list of issues had been drawn up following broad consultations involving, among others, several ministries, the Malawi Human Rights Commission and various civil society organizations. The country's first tripartite elections (presidential, legislative and municipal) had been held in May 2014. Homosexuality remained a criminal offence, although in practice no prosecutions were brought in that regard. The Law Commission had reviewed the laws punishing homosexuality and had submitted its conclusions. However, owing to a lack of resources, the special commission to spearhead the reform of the relevant legislation had not yet been formed. A healthy debate was under way on the issue of minority rights, with the active involvement of civil society organizations advocating those rights. As to women's rights, a new law, the Gender Equality Act, which incorporated the main provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, had been adopted in 2013 and the laws on abortion and the prevention of domestic violence were currently being reviewed by two special law commissions. The Disabilities Act, containing the main elements of the Convention on the Rights of Persons with Disabilities, had been adopted. As to freedom of expression, a policy to guarantee access to information had been developed and the Access to Information Bill would be submitted to Parliament in September 2014. The commission of inquiry set up to look into the events of 20 and 21 July 2011, when 20 demonstrators had been killed, had made a number of recommendations, which had helped guarantee that subsequent demonstrations passed off peacefully. Definite progress had been made in legislative and institutional terms, but much remained to be done to ensure that ordinary people gradually took on board the principles enshrined in the Constitution and the law.

3. Summarizing the written replies to the Committee's list of issues, she said that the principles and provisions of the Covenant had been incorporated into the Constitution, chapter IV of which contained a bill of rights covering most of the civil and political rights enshrined in the Covenant. The Law Commission, which was responsible for the reform of legislation, systematically incorporated international human rights instruments into national law. Under the Constitution, the national courts were empowered to refer to the provisions of public international law and the case law of foreign jurisdictions when interpreting the provisions of the Constitution and of national legislation. The Malawi Human Rights Commission had been established under the Constitution and was regulated by its founding law of 1998. The Commission was an independent body whose task was to investigate human rights violations and to promote and protect human rights in the broadest sense. It drew up reports containing recommendations, and they were submitted to Parliament by the Minister of Justice and Constitutional Affairs for action. The main obstacle to the successful performance of the Commission's task was a lack of funding, a problem that unfortunately affected all Malawi's public institutions.

4. As to the decriminalization of consensual same-sex relationships, the Law Commission had been asked to give an opinion on the constitutionality of articles 137A, 153 and 156 of the Penal Code but the review had stalled for lack of resources. That fact

did not in any way call into question the Government's determination to review those provisions. Malawi had not established a mechanism specifically to monitor cases of violence based on sexual orientation because there had been no complaints relating to acts of violence of that kind and there was no information on the subject. The appropriation of widows' estates was punishable by a fine and a term of imprisonment under the Deceased Estates (Wills, Inheritance and Protection) Act of 2011. Moreover, the recent Gender Equality Act criminalized traditional practices harmful to women's dignity, health or freedom. The HIV/AIDS (Prevention and Management) Bill currently before the Cabinet made the rite of sexual cleansing a criminal offence, as being a factor in the spread of HIV/AIDS. Several information campaigns on violence against women had been organized. The Marriage, Divorce and Family Relations Bill had not yet been adopted because its provisions prohibiting polygamy and raising the legal minimum age of marriage continued to provoke debate. Nevertheless, efforts were being made to find a way out of the impasse. Currently, there were no plans to criminalize marital rape but that possibility had not been ruled out.

5. With regard to the case of Edson Msiska, legal proceedings were ongoing against three police officers. It was, however, extremely unlikely that the death of Fanikizo Phiri, unfortunate though it was, would result in legal proceedings, given the time that had elapsed since the events had taken place and the difficulties that presented in collecting evidence. The Director of Public Prosecutions had ruled that the police inquiry into the death of Robert Chasowa had been unsatisfactory and ordered further investigations to be carried out. The procedure was ongoing. As to police brutality, one of the measures taken had been to introduce a course on human rights into basic police training and the preparation of a human rights manual for police officers. The Lay Visitors Scheme, which enabled ordinary citizens to monitor the conditions of detention at police stations, had been implemented in accordance with the new Police Act. The Independent Police Complaints Commission had not yet been established owing to a lack of resources and, as a temporary measure, the police had set up a complaints unit. The new Legal Aid Act did not deny persons in police custody access to a lawyer. The Act regulated the grant of legal aid according to criteria that were in line with international practice. Alternative measures to detention applicable in Malawi included community service, suspended sentences, the confiscation of property and the payment of a fine or of compensation to the victim. As to the judicial system, measures had been taken to reduce the backlog of cases and to increase the number of judges, including lay judges. Among other safeguards in relation to searches without a warrant, the Police Act provided that: written grounds must be duly provided for a search to be authorized; a copy of the record of the search must be given to the owner of the premises searched, and any objects seized must be immediately taken to a magistrate. The Penal Code had been amended in 2010 to punish offences against morality involving children and the Child Care, Protection and Justice Act punished practices harmful to children, such as trafficking, abduction and forced marriage. The Law Commission had completed its review of the Adoption of Children Act and recommended the introduction of provisions to protect children adopted by foreign nationals. Finally, section 46 of the Penal Code, empowering the Ministry of Information and Civic Education to ban newspapers, had been repealed.

6. **The Chairperson** invited members of the Committee who so wished to put questions to the delegation.

7. **Ms. Waterval** asked whether the Law Commission had sufficient resources to do its work, whether it had reviewed the laws containing provisions discriminating against women and if so what amendments it had recommended, and whether it was empowered to make recommendations to the Government on laws whose content was not in itself contrary to the Covenant, but which were applied in a manner incompatible with the Covenant. She would also like to know what human and financial resources were available to the Malawi

Human Rights Commission and how many of its recommendations had been implemented. She wondered whether the Commission was accredited as an institution in compliance with the Paris Principles and, in the event that the Commission had investigated any cases of violence against homosexual, bisexual or transsexual persons, what recommendations it had made to the Government in that regard. Finally, she asked the delegation to clarify how the lack of funding could explain the Law Commission's decision to suspend its review of the articles of the Penal Code criminalizing homosexuality.

8. **Ms. Majodina** asked what action the Government was taking to make it clear to the public that practices such as the appropriation of widows' estates, "sexual cleansing" and levirate were completely unacceptable in a State which had undertaken to fully respect human rights. It would be useful to have information on the outcome of any awareness-raising campaigns or training programmes to eliminate those practices, as well as statistics on the number of cases related to those practices that had been brought before the courts and the number that had resulted in a conviction. She also asked the delegation to indicate whether the Marriage, Divorce and Family Relations Bill contained guarantees protecting widows against those practices and to explain why Parliament was taking so long to adopt the Bill. While noting the measures taken to combat domestic violence, she said it was regrettable that the data provided in that regard had not been disaggregated and that no information had been provided on the number of investigations opened, prosecutions brought and judgements handed down. She asked whether the support units for women victims of violence that had been set up within the community police services had the necessary skills to investigate acts of violence and punish the perpetrators and how many women had received assistance from those units. She asked the delegation to comment on the information provided by NGOs, to the effect that only half of female victims of violence requested assistance and that they only contacted the specialist community police units in 3 per cent of cases. She asked the delegation to say what percentage of allegations of violence resulted in legal proceedings and whether there were plans to implement training programmes on combating domestic violence for judges and law-enforcement officials. She asked why rape had not been criminalized as part of the recent amendments to the Penal Code. As to trafficking in persons, and particularly trafficking in children, she asked the delegation to indicate how many victim advice and support centres with adequate resources had been set up; whether awareness-raising activities were being carried out; whether the Government was prepared to take the necessary steps to ensure the prompt adoption of a law against trafficking; and whether law-enforcement personnel received training in victim identification, investigation methods and the conduct of legal proceedings in cases of trafficking.

9. **Mr. Vardzelashvili** said that he welcomed the de facto moratorium on the death penalty that had been in place for a number of years, as well as the High Court ruling finding the law imposing the death penalty in all cases of murder unconstitutional. However, he found it regrettable that Malawi had no plans to abolish the death penalty or, in consequence, to ratify the Second Optional Protocol to the Covenant. Noting that, in 2010, in the wake of that High Court ruling, the relevant provisions of the Penal Code had been amended to give the High Court discretion to sentence those convicted of murder to death or to life imprisonment, he asked the delegation to say how many death sentences had been handed down and how many sentences had been commuted since then. He also wished to know for which offences the courts had handed down the death sentence since 2007 and, since the 2010 amendments, how the law defined the crime of murder and whether the law contained criteria on which judges could base their decision to hand down a sentence of death or of life imprisonment. Finally, it would be useful to know whether the State party planned to extend the moratorium on the application of the death penalty, or to establish a legal framework in that regard.

10. He asked whether there were clear guidelines for the use of firearms by the police and whether the regulations had been reviewed following the killings committed by police officers. He thanked the delegation for the information provided on the investigation into the death of Edson Msiska and the sanctions taken against those responsible, but wondered why the authorities had not investigated the killing of Fanikizo Phiri. Bearing in mind the considerable body of evidence incriminating the police in the death of the student Robert Chasowa, the slow pace of the inquiry seemed to point to a lack of political will. He also found it regrettable that the authorities had not felt it necessary to investigate the killing of 18 unarmed demonstrators by police officers, or to publish the reports of the Malawi Human Rights Commission and the commission of inquiry looking into the conduct of the forces of law and order.

11. He asked the delegation to say whether the annual visit of the Inspectorate of Prisons was made to each prison in the country or a single establishment and whether the Inspectorate was empowered to make unannounced visits and deal with prisoners' complaints. Given that the State party had said that the recommendations of the Inspectorate of Prisons were rarely implemented owing to a lack of resources, it would be useful to know what steps the State party intended to take to resolve that issue. He also asked the delegation to indicate the outcome of the investigations carried out by the Inspectorate of Prisons and the Malawi Human Rights Commission into violations of the human rights of persons in police custody.

12. **Mr. Bouzid** asked how many police officers suspected of acts of torture and ill-treatment had been prosecuted. He invited the delegation to explain why the Independent Police Complaints Commission was still not operational. He would also welcome information on the composition and powers of civil society groups authorized to visit prisons and on their activities.

13. **Mr. Flinterman**, noting that, in a report commissioned by the Government, the Malawi Human Rights Commission had indicated that female genital mutilation continued to be carried out in the south of the country, and that other sources also reported that some ethnic groups still carried out female genital mutilation, asked the delegation to provide information in that regard and to describe the action taken to eliminate the practice, particularly any information campaigns and educational activities. He asked whether the Gender Equality Act had ever been cited as grounds for criminal proceedings against the perpetrators of such acts.

14. He asked the delegation to provide information on temporary detention facilities and to indicate whether accused persons were held separately from convicted prisoners. He would also like information on the itinerant hearings being arranged to help the authorities tackle the backlog of cases and put a stop to the practice of holding persons in pretrial detention for long periods of time. He wished to know whether judicial staff had received training on the application of the new provisions reducing the maximum duration of pretrial detention and requested figures on the application of the wide range of provisions for fast-tracking of cases and for the use of non-custodial alternatives for accused persons, as listed in the Criminal Procedure and Evidence Code, the Child Care, Protection and Justice Act and article 25 of the Penal Code. Finally, he would like to know under what conditions accused persons could receive legal aid.

15. Lastly, noting that the maternal mortality rate in connection with illegal abortions was very high, he asked what steps had been taken to amend the legislation on abortion and remove the provisions punishing women who terminated their pregnancies, and to give women access to safe abortion procedures.

16. **Mr. Seetulsingh** asked what measures the Government of Malawi intended to take to lift the suspension of the procedure for accreditation of the Malawi Human Rights

Commission by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Commission had been tasked with helping persons sentenced to death with the formalities concerning commutation of sentence, despite the fact that it did not have the resources required to carry out its mandate, and he asked whether the Government of Malawi intended to hand that task over to the Ministry of Justice and Constitutional Affairs or some other competent body.

17. **Mr. Shany** asked whether the Constitution nullified the provisions of article 9 of the Citizenship Act setting forth the conditions under which Malawian women married to foreign nationals could retain Malawian nationality, or whether there were plans to amend the Act.

18. **The Chairperson** suggested suspending the meeting briefly to allow the delegation to prepare its replies to the questions it had been asked.

The meeting was suspended at 4.40 p.m. and resumed at 5.05 p.m.

19. **Ms. Banda** (Malawi) said that the Committee would be informed as to the number of persons sentenced to death since 2010 in due course. The Government of Malawi was working with the Malawi Human Rights Commission to compile a list of prisoners sentenced to death and to examine the possibility of commuting their sentences. A committee had been established to consider applications for pardons and to make recommendations in that regard.

20. **Mr. Nyirongo** (Malawi) said that the Law Commission was an advisory body responsible for preparing and submitting proposals for amendments to legislation and the Constitution. Since its creation, the Law Commission had published six reports on various human rights issues. The Commission had a purely advisory role so its task ended once its report had been submitted to the Government. As to abortion, a commission was currently considering the possibility of drafting a bill on the voluntary termination of pregnancy; however, that issue was already covered by the provisions on the right to sexual and reproductive health contained in the 2013 Gender Equality Act. The traditional customs imposed upon widows were no longer generally held to be acceptable by Malawian society. Given that such practices were harmful and constituted discrimination based on gender and marital status, they were covered by the Gender Equality Act and were prohibited; the same applied to female genital mutilation. The Marriage, Divorce and Family Relations Bill and the bill on trafficking submitted in 2011 by the Law Commission had not yet been adopted owing to the change of Government. However, consideration of the bills continued and was proceeding at a steady pace. The legislation on domestic violence was currently being reviewed; the consistency of its provisions with the Penal Code and a number of other laws needed to be verified. The amendments arising from that process should, among other things, simplify the task of those bodies working to combat the problem. Finally, the fact that certain provisions of the Citizenship Act were not in line with the constitutional principle of gender equality did not, in itself, constitute sufficient grounds for repealing them. For them to be repealed, their unconstitutionality would have to be challenged in the courts.

21. **Ms. Banda** (Malawi) said that, with regard to sexual minorities, the Malawi Human Rights Commission was working to promote debate on discrimination against such groups and an analysis of that discrimination. To date the Commission had not received any allegations of violence against homosexual, bisexual or transsexual persons. The Law Commission was currently examining the issue of medical treatment for HIV/AIDS infection. Owing to the parliamentary elections, the process of reforming the Malawi Human Rights Commission had not yet begun, although it remained a priority for the Government. One proposed reform involved changing the procedure for appointing the

Commissioner of the Malawi Human Rights Commission, so as to ensure that the appointee was fully independent.

22. **Ms. Chizumila** (Malawi) said that, in a welcome development, the budget of the Malawi Human Rights Commission had been considerably increased, from 38 million Malawi kwacha for 2011–2012, to 110 million Malawi Kwacha for 2013–2014. However, the budget was still not large enough to allow the Commission to effectively carry out all its tasks. She said that the Inspectorate of Prisons had visited all the penitentiary institutions in the southern regions of the country and that the Malawi Human Rights Commission also carried out prison visits.

23. **Mr. Kayira** (Malawi) said that the courts organized hearings in prisons in cooperation with judges, prosecutors, defence lawyers appointed as a part of legal aid and NGOs. A list of accused persons was drawn up and, where the court noted that the legal duration of pretrial detention had expired it immediately released the person. The Directorate of Public Prosecutions had held several information sessions on itinerant hearings for judicial officials and Ministry of Justice and police officials. Following the amendment of the Criminal Procedure and Evidence Code in 2010, the length of pretrial detention had been cut to a maximum of 90 days for a moderately serious offence and to 180 days for a serious offence such as murder or high treason.

24. **Ms. Banda** (Malawi) said that, under the new Legal Aid Act, the decision to assign a lawyer to a suspect was taken by the Legal Aid Bureau, which took into consideration the nature of the offence, the suspect's financial situation, the significance of the case in terms of legal precedent, the suspect's lack of familiarity with the language to be used in the proceedings, and whether the person had a disability. Furthermore, in order to make up for the lack of legal aid defence lawyers, the law provided that, in agreement with the courts, civil society organizations too could represent suspects in proceedings.

25. **Mr. Kanyama** (Malawi) said that police officials working in support units for victims of domestic violence received special training and that the police and civil society had formed partnerships so as to increase the support units' effectiveness. As to the use of firearms, law and order officials were obliged to apply the relevant provisions of the Police Act, or would be liable to prosecution. Following the events of 20 July 2011, during which around twenty demonstrators had been killed by the police, a commission of inquiry set up by the Government had carried out an investigation and submitted a report. On the basis of the commission's conclusions, several law and order officials had been arrested and suspended pending trial. The police had launched an inquiry. In order to ensure that such an incident did not occur again, the Government had invited the Irish police to Malawi to train the Malawian force in the maintenance of law and order during public demonstrations. The aim in that regard was for police officers to ensure the safety of persons without violating their rights. To tackle the issue of poor conditions of detention in police stations, lay visitors committees had been formed in accordance with the Police Act, with the power to visit police stations unannounced to check, inter alia, that women were held separately from men and minors separately from adults. Those committees then reported to the regional police commissioner, who acted on their recommendations.

26. **The Chairperson** invited those Committee members who wished to do so to ask the delegation further questions.

27. **Ms. Majodina** asked what measures were taken to ensure that persons who carried out the cleansing ritual for widows were prosecuted and whether any such cases had yet been brought before the courts. She also wished to know whether police officials were trained to investigate cases of domestic violence, whether women wishing to lodge complaints of domestic violence faced obstacles and whether they ever suffered further ill-treatment, particularly sexual abuse, at the hands of police officers. She asked the

delegation to say how many shelters there were in Malawi for women victims of trafficking in persons, whether they offered women long-term care and whether programmes were being implemented to combat trafficking in children to neighbouring countries.

28. **Mr. Flinterman** asked whether a law expressly stating that the Covenant formed part of the domestic legal order had been adopted or the provisions of the Covenant had been incorporated into any of the country's legal texts. If the latter was the case, he would like to know how the authorities ensured that the provisions of the Covenant were applied in accordance with the interpretation given by the Committee in its general comments. Noting that the Law Commission had only an advisory role, he asked whether the State party intended to decriminalize abortion and when a law enshrining the right to abortion could be adopted in Malawi.

29. **Mr. Vardzelashvili** asked the delegation to indicate the offences for which persons had been sentenced to death during the reporting period; he wondered whether the significant reduction in the number of prison deaths was linked to the increase in the resources allocated to prison administration and whether the State party intended to continue with that approach. Finally, he asked the delegation to indicate whether there was a mechanism for prisoners to submit complaints to the Inspectorate of Prisons and whether the Inspectorate acted on them, if need be.

30. **The Chairperson** asked how long, on average, persons sentenced to death who had applied for a pardon had to wait for a decision and whether persons held in pretrial detention for an excessively long time could claim compensation before the courts. He also wished to know to whom the Inspectorate of Prisons and the Malawi Human Rights Commission submitted their prison visit reports and whether they were made public.

31. **The Chairperson** thanked the delegation and invited it to reply to the additional questions that had just been put to it at the next meeting.

The meeting rose at 6 p.m.

United Nations CCPR/C/SR.3073

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3073rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 10 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Malawi (continued) (CCPR/C/MWI/1; CCPR/C/MWI/Q/1/Add.1 and 2)

1. *At the invitation of the Chairperson, the delegation of Malawi took places at the Committee table.*

2. **Ms. Banda** (Malawi) said that no cases of widow cleansing had been brought before the courts because the practice had only been criminalized in 2014 through the adoption of the Gender Equality Act. Previously, public awareness campaigns had been launched. Professional cleansers had also been sensitized and were subsequently involved in efforts to end that harmful practice.

3. **Mr. Nyirongo** (Malawi) said that the Prevention of Domestic Violence Act enabled the police to investigate reports by victims or witnesses of domestic violence. Women were often reluctant to report assaults against them, particularly if the offender was their husband, because of the risk to their marriage and financial stability. Training sessions on the issue had also revealed under-reporting by men of assaults against them because of the assumption that men could not and should not allow themselves to be victims of domestic violence. A rise in reporting had been noted subsequent to those training sessions. Further statistics were needed to fully grasp the scope of the situation.

4. The Child Care, Protection and Justice Act currently provided the only legal means of addressing trafficking in persons. While a more effective response to the issue was needed, existing structures, such as shelters for victims of domestic violence, were used for victims of trafficking. Comprehensive procedures for dealing with trafficking victims, including counselling and health care, would be set up in parallel with the enactment of the bill on trafficking in persons.

5. **Ms. Chizumila** (Malawi) said that detainees used visits from relatives, lawyers, the Malawi Human Rights Commission or the Inspectorate of Prisons to lodge complaints. Upon receipt of a complaint, action was taken by the relevant bodies or the Inspectorate itself, which could administer bail. Reports prepared by the Human Rights Commission or the Inspectorate were welcomed by prison officials and were sent to the relevant government departments. They informed the development of governmental initiatives, workshops for the general public and prison reforms.

6. **Mr. Kayira** (Malawi) said that since 2007 there had been one case in which the death penalty had been imposed; the delegation could provide details. The death penalty could be imposed for crimes including treason, murder and aggravated robbery. The courts referred to established common-law principles to determine which sentences to impose when prosecuting. Additionally, the Special Law Commission was formulating guidelines on sentencing. Persons held in pretrial detention for a period exceeding the prescribed time limit could sue for false imprisonment and be compensated through the courts.

7. **Ms. Banda** (Malawi) said that the Malawi Human Rights Commission was forwarding to the advisory committee on the granting of pardon a list of persons sentenced to death. An amendment had been made to criminal procedure whereby the criminal record of persons who had been arrested and subsequently discharged was expunged.

8. **Mr. Nyirongo** (Malawi) said that as Malawi was a dualist State, certain provisions of the Covenant had acquired constitutional status and others were given effect through various enactments, such as the Penal Code, and Acts on gender equality, child protection and disability. Furthermore, in areas where there was no legislation to give effect to the

requirements of the Covenant, appropriate legislation was drafted. The Special Law Commission was conducting a review of the laws in force on abortion and it was expected that by November 2014 it would submit its report to the Cabinet with a view to the enactment of further legislation.

9. **Mr. Bouzid** asked what was being done to remedy the shortage of judges, which had resulted in a backlog of cases. He also asked what measures were taken to address the problems of the prolonged pretrial detention of many people, the high fees charged by lawyers that impeded the process of justice, and the lack of legal aid funds and staff, which meant that legal aid was virtually non-existent.

10. He commended the high levels of religious tolerance in the State party. However, further information would be appreciated on reports that members of the Rastafarian community were refused employment in the public and private sectors, pupils were forced to cut their hair and children were denied access to some schools. What measures were being taken to restore the rights of the Rastafarian people?

11. Given that, despite the ban on child labour under the Constitution and the Labour Code, the phenomenon remained widespread in the State party, particularly on tobacco and tea plantations, and that reports by the National Statistical Office had revealed that over a quarter of children between the ages of 5 and 14 worked, what was being done to combat child labour and to allocate funds for the investigation of cases of suspected child labour? In addition, what was being done to address the contradictory definitions of a child in domestic legislation? What measures were in place to assist street children and how prevalent was that phenomenon?

12. **Mr. Vardzelashvili** asked for information on the enforcement of the Disability Act, which had come into force in 2012, on the disability trust fund, on the remedies available to persons with disabilities, on the grounds on which those persons could appeal, and on cases before the courts involving persons with disabilities. What body was responsible for monitoring the implementation of the Disability Act? What reporting mechanism was in place, other than the courts, for persons with disabilities whose rights had been violated? Which violations of the law concerning persons with disabilities were punishable by imprisonment?

13. He commended the repeal of the Penal Code provision that had restricted freedom of the press. In the light of reports that current relevant legislation was not in conformity with international standards, what was the status of the law on access to information? Did the State party envisage decriminalizing defamation? He would welcome clarification of all the cases involving journalists and human rights defenders listed in the table in paragraph 43 of the replies to the list of issues, together with information on the status of the Bill relating to the use and monitoring of the Internet. Details would also be appreciated on the detention of demonstrators who had called for the resignation of the police inspector-general implicated in the death of Robert Chasowa in 2011. Had there been an investigation of those detentions? Lastly, what plans were there to strengthen the independence of the public broadcasting system and improve the management of the corresponding board of trustees? What procedure was in place for the issue of a broadcasting licence?

14. **Ms. Majodina** expressed concern about the lawfulness of all police searches. She asked how it was determined that a case was urgent and what criteria were used to authorize a search without a warrant. Had any complaints been lodged about searches without a warrant since the amendment to the relevant provision of the Police Act? Were searches without a warrant carried out in compliance with article 17 of the Covenant?

15. **Mr. Flinterman** asked the delegation to clarify the conflicting information on the separation of convicted and unconvicted prisoners. Turning to question 16 of the list of issues, he wondered how the Government intended to roll out HIV treatment and

prevention services given that some vulnerable groups, especially homosexual men, were directly criminalized. Noting that the concerns raised about article 10 of the HIV/AIDS (Prevention and Management) Bill had apparently been addressed following consultations with all key stakeholders, he asked about the outcome of those consultations, whether the provisions in question had been withdrawn, and the status of the Bill.

16. With regard to question 19 of the list of issues, he noted with concern that, although the commission of inquiry into the demonstrations of 20 July 2011 had already presented its findings, no prosecutions had been brought and no compensation paid out. He would welcome more information on the recommendations of the commission and on lessons learned. He asked the delegation to comment on the "enormous challenges" faced in the enjoyment of the right to peaceful assembly, as mentioned in the State party report.

17. Lastly, he would be interested to hear about the Government's plans for dissemination of the Committee's concluding observations among the judiciary and the general public, and the role of the Human Rights Commission in that regard.

18. **Ms. Waterval**, noting that under the Malawian Penal Code child sexual abuse was considered as sexual relations with a girl under the age of 13, asked whether boys were also protected under criminal legislation. If not, were there are any plans to criminalize child sexual abuse regardless of gender? What steps was the State party taking to prevent child sexual abuse generally? She invited the delegation to comment on a case that had been brought to the Committee's attention in which a man who had sexually abused a child and infected her with HIV had had the charges against him dropped after paying the family of the victim compensation of US$ 17.

19. Noting that Malawi had one of the highest rates of child marriage in the world, she encouraged the State party to ensure that the Marriage, Divorce and Family Relations Bill, which proposed that the minimum marriage age should be increased to 18, was enacted as a matter of urgency. She endorsed the comments made by Mr. Bouzid in relation to question 17 of the list of issues and urged the State party to address the tensions between Christians and Muslims in the Mangochi region of the country, raising awareness of the need to respect freedom of religion.

20. **Mr. Zlătescu** said that he supported the comments made by Ms. Waterval in relation to questions 21 and 23 of the list of issues. The State party should increase efforts to end widespread child and forced marriage. He asked the delegation to comment on reports that some girls were trapped into early pregnancies and marriages after being forced into a rite of passage called initiation. Was it true that, in accordance with traditional custom, girls in some communities were persuaded to engage in premarital sex in order to get ready for their husbands and that in some cases parents paid adult men to sexually initiate their daughters? He urged the State party to take the necessary steps to enact the Marriage, Divorce and Family Relations Bill and asked when the Government planned to enact the Education Bill, which provided for compulsory education, and whether there was any intention to develop a national action plan to combat child marriage and a national policy on teenage reproductive health, to prosecute violence against women, including child marriage, and to establish shelters for survivors of gender-based violence and child abuse.

21. **Mr. Shany** asked whether the age of criminal responsibility had been increased from 7 to 10, as proposed some years previously.

22. **Mr. Seetulsingh** asked about the outcome of the case of Mr. John Kapito, the former chairperson of the Human Rights Commission, mentioned in the reply to question 18 of the list of issues. He would welcome clarification of the difference between "possessing seditious materials" and "possessing materials with seditious words".

23. **The Chairperson**, speaking as a member of the Committee, asked whether the reports of the Inspectorate of Prisons and the Ombudsman were published in hard copy or electronically. Noting that some examples of capital crimes had been provided, he said that it was important for the Committee to be informed of all capital crimes. He would be interested to hear of any cases in which persons who had been detained beyond the legal time limits had successfully initiated lawsuits and received reparation. Lastly, he asked whether spousal rape was a crime in Malawi.

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

24. **Ms. Banda** (Malawi) said that measures taken by her Government to address problems relating to legal representation had included turning the Department of Legal Aid into a stand-alone institution, the Legal Aid Bureau. The rationale was that, as an independent entity, the Bureau would be able to access funding from other sources, including development partners, thus boosting its capacity. The Bureau had established a partnership arrangement with civil society organizations, under which it gave them accreditation to provide legal aid services in districts in which such services were lacking. A partnership agreement for the provision of pro bono legal services to clear the backlog at the pretrial stage had also been entered into with Irish Aid. The Government had increased the remuneration of legal aid lawyers with a view to attracting lawyers from private practice and had amended the Legal Education and Legal Practitioners Act to allow lawyers qualified in other jurisdictions to practise in Malawi.

25. The age of criminal responsibility had been raised from 7 to 10 in 2010. In the case of John Kapito, the prosecution had been dropped and he had filed a private lawsuit to obtain compensation from the Government. The reports of the Inspectorate of Prisons and the Ombudsman were in the public domain once they had been presented before Parliament. The Education Act, which provided for compulsory education, had been passed in 2013.

26. **Mr. Nyirongo** (Malawi) said that the right to freedom of religion was enshrined in the Constitution and could not be derogated from under any circumstances. His Government had taken note of the concerns of the Rastafarian community and was now formulating a strategy for addressing them and ensuring that Rastafarians enjoyed their right to religious freedom, bearing in mind the social challenges involved in accepting Rastafarians in employment and education.

27. The Government was well aware of the problem of child labour and exploitation, and the Ministry of Labour was doing its utmost to address the challenges. Efforts were being made to ensure that the relevant laws were enforced while taking into account socioeconomic problems, such as the high number of child-headed and single-parent households that relied on children participating in economic activity to support the family. The Ministry of Labour had commissioned research to ascertain the extent of the problem and ensure that children who were working were afforded the necessary protection and were able to also realize the right to education. The definition of childhood varied according to context in Malawi. For example, under the Penal Code, children were persons under the age of 16, but in the specific context of labour children were persons up to the age of 14.

28. **Mr. Kayira** (Malawi) said that, according to current statistics, a total of 77 broadcasting licences had been issued by the regulatory authority, including 16 to private television stations. While the State party acknowledged that interference had been a challenge in the past, the public broadcaster's coverage of the tripartite elections in May 2014 had been considered to be very independent by the electoral commission and foreign observers alike.

29. **Ms. Banda** (Malawi) said that the Government had adopted a national policy aimed at keeping girls in school, and the Ministry of Education and the Ministry of Gender, Children and Social Welfare were working together to tackle harmful practices such as initiation.

30. **Mr. Nyirongo** (Malawi) said that the Government was aware of the issue of spousal rape and was endeavouring to find a solution to legislate for it. It had originally been proposed to include spousal rape under the Prevention of Domestic Violence Act, but it had been omitted from the final version. The matter had come up for debate again during the drafting of the Gender Equality Act and the Marriage, Divorce and Family Relations Bill, but it had ultimately not been included there either, although the Bill did include a provision on rape in the case of spouses who were separated.

31. **Ms. Banda** (Malawi) said that the Police Act was the result of a consultative process launched by the Law Commission in the early 2000s to review all laws regulating the police. Although the bill had stalled at one point, there had been no political motivation for the delay. Having conducted extensive research in other jurisdictions, the Government was satisfied that the Act was in conformity with international instruments regulating searches without warrants.

32. **Mr. Kayira** (Malawi) said that the separation of remand and sentenced prisoners was a requirement under the Constitution as well as international law. The State party made every effort to ensure that the requirement was respected, but in some instances, due to a lack of space, the two categories of prisoners had been held together.

33. Searches without a warrant were the exception, and must be conducted by the police in accordance with strict rules in urgent cases. The delegation was not aware of any complaints in relation to search conditions not being respected or searches being considered to constitute harassment. However, such complaints could be brought before the courts. The Government was of the view that the procedure was in conformity with article 17 of the Covenant. Although the right to privacy was provided for under the Constitution, it was not an absolute right, and there were clear legal instances in which limitations applied.

34. **Ms. Banda** (Malawi) said that the HIV/AIDS (Prevention and Management) Bill was intended to be all-encompassing and prevent HIV within society as a whole; it was therefore difficult to see how it could be seen to marginalize homosexuals. The Bill had been delayed because, despite an extensive consultation process throughout the country, including with civil society and people living with HIV/AIDS, and study tours to other countries, it had been decided to embark on another round of consultations after the Bill had already been submitted to the Ministry of Justice and was ready to be discussed at Cabinet level. The Government must now decide whether the Cabinet should consider the Bill as already submitted, taking into account possible new proposals, or start the process over again and wait for a new draft.

35. **Mr. Nyirongo** (Malawi) said that one of the problems faced on 20 July 2011 had been the high level of ignorance among organizers and the police about the provisions of the Police Act, resulting in a failure to comply with most of the detailed procedures that it contained for conducting and controlling demonstrations. The commission of inquiry established to investigate the events of that day had published its findings in July 2012, making a number of specific recommendations to all the parties involved, including on the use of force by the police and the need to avoid sensationalism in the media. In response to the report, several training sessions on crowd control had been organized to ensure that police officers acted in accordance with the Police Act. Since July 2011, a number of protests had been held without incident, suggesting that important lessons had been learned.

36. **Ms. Banda** (Malawi) said that protesters sometimes had hidden agendas and could become hostile, which presented a challenge to the police. The many compensation claims

filed against the Government for damage caused during the protests had led to a review of the relevant legislation.

37. With reference to the dissemination of information, she said that her delegation would bring the initial report (CCPR/C/MWI/1) and the Committee's concluding observations to the attention of the Cabinet in Malawi.

38. **Mr. Nyirongo** (Malawi) said that the Government would follow the approach adopted with other core international human rights instruments, consisting in assembling all the documents relating to the session and disseminating them widely, particularly among those involved in drafting Malawi's report, as part of a process of continuous engagement with all stakeholders.

39. With regard to the sexual abuse of minors, he said that the Penal Code had been amended in 2010 to raise the age of consent for girls from 13 to 16. A new chapter had been added on offences against morality relating to children; in it the definition of sexual activity applied equally to boys and girls under the age of 16. Provisions on the sexual abuse of minors were also contained in the Prevention of Domestic Violence Act and the Child Care, Protection and Justice Act, which had created juvenile courts and imposed restrictions on how the media could report cases involving children. Lastly, there were child protection officers at almost all police stations responsible for spearheading prevention efforts through education and awareness-raising at the community level, and victim support units had been set up with the participation of traditional leaders in order to better identify abuse and respond to complaints.

40. **Ms. Banda** (Malawi), referring to reports that a girl in Malawi had been sexually assaulted and infected with HIV, said that her delegation, having not been aware of the matter, would investigate it in due course. Turning to the issue of the death penalty, she said that a list of capital offences would be compiled and submitted to the Committee, as requested. An advisory board had been set up to monitor implementation of the Disability Act; there was a directorate within the Human Rights Commission dealing specifically with issues pertaining to persons with disabilities.

41. **Ms. Waterval** requested further information on the rule relating to collaboration in court, whereby victims were required to produce a witness to testify that certain offences had taken place.

42. **Mr. Flinterman** said he wished to know why the prosecution of persons in connection with the events of 20 July 2011 had been delayed, and whether criminal proceedings were likely to be instituted in that regard.

43. **Mr. Kälin** invited the delegation to comment on reports that the State party's refugee status determination system had not rendered any decisions since December 2011, leaving thousands of cases pending, and that some asylum seekers had either been denied entry or deported on the grounds that their country of origin was not at war, despite the fact that the absence of conflict did not preclude the possibility of exposure to ill-treatment.

44. **Mr. Vardzelashvili** asked the delegation to comment on concerns that there was excessive Government influence in the appointment of executive board members of the Malawi Broadcasting Corporation and Television Malawi, and that the E-bill on access to information imposed restrictions on freedom of expression, particularly with regard to online media.

45. **Mr. Bouzid** requested statistics on street children in Malawi. He asked whether their number was growing, and whether the Government had established centres to provide support.

46. **The Chairperson**, speaking as a member of the Committee, asked whether reports of the Human Rights Commission and the Inspectorate of Prisons had been laid before Parliament. He sought clarification on the nature of the reports, and on whether they could be made available to the Committee.

47. He requested information on the provisions of the Police Act concerning the use of force, and recalled that, under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, intentional lethal use of firearms could only be made when strictly unavoidable in order to protect life. He asked whether the force used during the protests of July 2011 was considered excessive under Malawian law and, if so, what measures had been taken against those responsible.

48. Lastly, he wished to know whether there had been any claims of false imprisonment in Malawi and whether any reparation had been awarded.

49. **Ms. Banda** (Malawi) said that the Ministry of Justice had been inundated with such claims, most of which were settled out of court as the Government had no defence. The Ministry had ordered the Police Service to discipline the officers implicated in those claims in order to curb unlawful conduct and mitigate the loss of resources incurred by the Government.

50. **Mr. Kanyama** (Malawi) said that, pursuant to the Police Act, officers were permitted to use firearms under certain specific circumstances, including when there was a threat to life and when persons guilty of a felony attempted to escape lawful custody. Such use was never intended to kill, but to disable. The events of 20 July 2011 had prompted the Government to ensure that, when handling demonstrations, police officers acted in accordance with the law, and particularly the Police Act.

51. **Ms. Banda** (Malawi) said that the Human Rights Commission and the Inspectorate of Prisons produced both ad hoc and annual reports, detailing the work carried out by the two institutions, the challenges faced and the recommendations put forward. In response to one of those recommendations, electric cooking pots had been supplied in every prison in the country, and elements of a report by the Human Rights Commission had been taken into account in the prosecution process relating to the Capital Hill Cashgate Scandal.

52. Turning to the issue of street children, she said that the Ministry of Gender, Children and Community Development was gathering official statistics and cooperating with the non-governmental organization SOS Children's Villages International, which managed a number of children's shelters in Malawi.

53. **Mr. Kayira** (Malawi) said that, in the prosecution of sexual offences, collaborative evidence was required, either in the form of a witness statement or resulting from the court's consideration of all the circumstances surrounding a case.

54. Regarding the events of 20 July 2011, he said that arrests had been made and a docket had been sent to the Director of Public Prosecutions, but proceedings had been delayed by the need to further investigate some elements of the case. Nevertheless, the Government was committed to holding the perpetrators accountable for their actions.

55. **Ms. Banda** (Malawi) said that there was political will to move the E-bill forward as soon as possible. The Malawi Broadcasting Corporation faced strong competition from the Zodiak Broadcasting Station, a privately owned station with national coverage that had, in the past, been chosen as the official broadcaster of electoral results by the Malawi Electoral Commission.

56. **Mr. Nyirongo** (Malawi) said that the Government had established a committee to clear the backlog of requests for asylum and refugee status, a task that should be completed

by the end of 2014. Efforts were also being made to develop a new immigration policy to guide legislative reforms in the field of migration.

57. **The Chairperson** said that, while Malawi had achieved considerable progress in terms of openness and respect for fundamental freedoms, there were still a number of issues to address. With that in mind, and in order to give greater focus to the Committee's recommendations to the State party, he requested the delegation to provide copies of the most recent reports laid before Parliament by the Inspectorate of Prisons and the Office of the Ombudsman, in addition to the list of cases in which force could be used by law enforcement officials under the Police Act.

The meeting rose at 1.05 p.m.

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Summary record of the 3074th meeting
Held at the Palais Wilson, Geneva, on Thursday, 10 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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This record is subject to correction.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Georgia (CCPR/C/GEO/4; CCPR/C/GEO/Q/4 and Add.1; and HRI/CORE/1/Add.90/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Georgia took places at the Committee table.*

2. **Ms. Tsulukiani** (Georgia), highlighting the most recent measures taken by Georgia to fulfil its obligations under the Covenant, said that the first half of 2014 had seen the adoption of a national human rights strategy (2014–2020), which essentially aimed to consolidate institutional democracy by gradually integrating a human rights-based approach into public policies and programmes; a national human rights action plan; and the Law on the Elimination of All Forms of Discrimination, which covered direct, indirect and multiple discrimination in both the public and private sector. The Office of the Public Defender would monitor the enforcement of that Law. In 2012 and 2013 a series of reforms had been launched with a view to ensuring the independence of the judiciary. The main objective of the first stage of reform was to empower judges of the ordinary courts to run the High Council of Justice independently and to redefine the criteria for appointing, promoting and assessing judges; the second stage focused on ensuring the independence and life tenure of judges. Various criminal justice reforms were under way. In particular, the competent bodies were working to bring provisions relating to victims' rights into line with relevant European standards, to draft a juvenile justice code and to review the law governing plea bargaining. In 2013, all prosecutorial powers previously vested in the Minister of Justice had been transferred to the Chief Prosecutor.

3. Following the parliamentary elections of 2012, the Government had made it a priority to depoliticize the police force and transform the Ministry of Internal Affairs into a public body that served the community. In that context, a law on the police, drawn up in close collaboration with the European Union and various local and international non-governmental organizations, had been adopted. In addition, infrastructure and living conditions in temporary detention centres had been improved and not a single human rights violation had been reported since November 2012. Significant progress had been made since 2013 in improving detention conditions, despite the grim legacy that had been inherited. The prison population had decreased by 60 per cent, access to quality health care for remand and convicted prisoners had been improved, the spread of tuberculosis had decreased by a factor of 15, a suicide prevention programme had been launched, services catering for drug addicts and persons with disabilities had been provided and the mortality rate among detainees had dropped to 22 per 10,000. Three dilapidated prisons had been closed down and two new detention centres would open shortly. Since early 2014, the authorities had placed a particular focus on the psychosocial rehabilitation and social reintegration of detainees and the improvement of mental health care in prisons. An independent legal aid service had also been established.

4. The implementation of the Covenant in territories occupied by the Russian Federation was an extremely difficult challenge for the Georgian authorities. Those regions were under the control of Russian military forces and were difficult to access since barbwire fences ran the length of the occupation line. Sick people and pregnant women, among others, had been denied authorization to leave the territories, which had already had tragic consequences for those who required emergency hospitalization. The ethnic Georgian population that remained in those territories lived in constant fear of persecution, since abductions, physical violence and attacks targeting that population were common currency. The Government of Georgia was making every effort to meet the needs of people living on

either side of the occupation line and, as part of its strategy to engage with communities in the occupied territories, was providing them with ambulances and free health care. He urged the Office of the High Commissioner for Human Rights to continue its efforts to obtain authorization to visit Abkhazia and Tskhinvali region.

5. Lastly, during the reporting period, Georgia had ratified the Convention on the Rights of Persons with Disabilities, the Convention on the Reduction of Statelessness and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

6. **The Chairperson** invited the Committee members to address questions to the delegation.

7. **Mr. Kälin** requested more information on cases in which the Georgian courts had invoked the Covenant and asked how it had given effect to Views adopted by the Committee on communications concerning the State party; the response given in the written replies did not indicate whether it had actively followed up on the proposals of the unit of the Department of State Representation before International Courts of Human Rights that was responsible for monitoring and implementing the decisions of those courts. He invited the delegation to comment on allegations that the Public Defender had an extremely limited budget and relied to a large extent on international donor support.

8. Could the delegation provide more comprehensive information on the difficulties faced by the State party in the implementation of its strategy on the occupied territories and indicate whether it planned to take further measures to address the needs of persons living in those areas? Noting that exceptions to the ban on entering the occupied territories via unofficial entry points were tolerated, in particular in order to supply drugs or basic necessities, he asked the delegation to provide examples of cases in which access to those territories had been denied or granted and to specify the grounds for the respective decisions. Given that under article 8 of the Law on Occupied Territories documents issued by an authority established following the occupation had no legal value, it would be helpful to know whether marriage and birth certificates drawn up by the local civil registry office in those territories were considered valid by Georgia; if not, children born in the territories would be deprived of the right to be registered at birth. Lastly, he invited the delegation to comment on reports that residents of the occupied territories were almost always issued with identity cards that specified their nationality, rather than the "neutral" identity documents that were recognized by Georgia.

9. **Mr. Fathalla** said that the initial version of the bill on combating all forms of discrimination provided that enforcement of the law would be monitored by an independent institution with the power to bring cases before the courts, while the final version of the bill, which had recently entered into force, had conferred responsibility for monitoring enforcement on the Office of the Public Defender, which was not competent to bring cases before the courts. He invited the delegation to comment on that matter; to indicate whether the Office of the Public Defender was able to effectively fulfil its mandate, and in particular whether it was allocated sufficient resources to do so; and to state whether the effective remedies provided for in the initial bill had been retained its final version. Could the delegation also respond to the questions that had been raised as to whether the punishments provided for in the anti-discrimination law would have the desired deterrent effect? Since the State party had not provided a written reply on that issue, he asked the delegation to indicate whether racial discrimination was punishable and racist organizations were banned under the Criminal Code and whether measures were being taken to combat hate speech and discriminatory remarks against ethnic or religious minorities in political discourse or the media. He also asked the delegation to specify whether the Law on the Elimination of All Forms of Racial Discrimination also protected the right of persons with disabilities to health, education and social benefits and their right to access public places and public

transport. Lastly, he would welcome additional information on sentences handed down to perpetrators of ill-treatment of prisoners and on measures to compensate victims, as well as replies to questions relating to reprisals, victims' access to compensation and rehabilitation programmes for victims of torture.

10. **Mr. Zlătescu** asked how the State party intended to solve the problem of the underrepresentation of women in political life and reduce inequality between men and women in terms of working conditions and access to employment and professional training. He asked what measures did the State party intend to take to promote women's access to family planning and reproductive health programmes in rural areas, as well as to promote the integration of ethnic minority women, while respecting their culture and language. The delegation should also indicate how the State party intended to combat the marginalization of homosexuals, bisexuals and transsexuals.

11. **Mr. Salvioli** expressed surprise that the State party had indicated in its written replies that the Prosecutor's Office had not recorded a single case of sexual violence, whereas many sources asserted that a large number of rapes had been committed during the conflict in 2008. He invited the delegation to describe the way in which investigations were carried out and to explain why the cases of sexual violence had not been detected. Despite the numerous measures taken by the State party to end violence against women, the incidence of such violence remained high, the investigations ineffective and shelters for victims too few in number. Although the adoption of legislation making domestic violence a punishable offence was welcome, it was nevertheless regrettable that only acts that caused physical harm were covered under the law. It would be interesting to know whether the State party planned also to crack down on psychological violence, which was particularly common in the context of domestic violence. The delegation should indicate whether marital rape and sexual harassment in the workplace were expressly prohibited under the law and, if so, give examples of cases brought before the courts. He invited the delegation also to say whether the State party planned to reconsider the provision imposing a waiting period of five days, as opposed to the previous three-day period, for women who had decided to terminate their pregnancy, and whether measures were taken to discourage sex-selective abortions. In the light of the information communicated to the Committee by the Public Defender that between 2011 and 2013 a large number of girls had left school to marry, he wished to know whether early marriage was prohibited by law and whether measures had been taken to prevent it.

12. He asked for further details of the investigations into the human rights violations committed during the armed conflict in 2008 and the legal action taken on them. He invited the delegation to comment on the fact that only one person had been convicted and, moreover, sentenced to a prison term of less than 4 years for the deaths caused by the excessive use of force by police and prison staff during the unrest at prison No. 5 in Tbilisi. Similarly, the delegation should indicate whether, apart from the Minister of Internal Affairs, others had been brought to justice and made to answer for the events of 26 May 2011, during which several demonstrators had been killed and injured. Lastly, it would be useful to hear about the detention of Mamuka Mikautadze, whose death was officially ruled as suicide, whereas an autopsy had revealed external bruising which indicated otherwise, and the suspicious death of Shalva Tavtukhashvili, found dead at his home, whereas he had been the main witness in a case against a special security force official.

13. **Mr. Ben Achour** wished to know whether the Government planned to follow up on the proposals by the Public Defender to prohibit plea bargaining between the judge and the defendant, as provided for in the Code of Criminal Procedure, in cases of persons prosecuted for acts of torture or ill-treatment, and to set up an independent mechanism for investigating all allegations of acts of torture and ill-treatment attributed to State officials. With reference to paragraph 71 of the State party's written replies, he asked what offences

had been committed by the 83 prison staff who had been dismissed and 149 others who had faced disciplinary measures.

14. **Ms. Waterval** asked what was being done to ban the corporal punishment of children in all settings, including within the family. It seemed to be broadly accepted in the State party for educational and disciplinary purposes.

15. **The Chairperson** proposed briefly suspending the meeting to allow the delegation to prepare its replies to the questions which it had been asked.

The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.

16. **Mr. Tsuladze** (Georgia) said that the provisions of international instruments and the decisions of the European Court of Human Rights were commonly cited by Georgian courts. The Covenant had been explicitly invoked in 10 judgements handed down by the ordinary courts and in 5 rulings by the Constitutional Court concerning issues such as conscientious objection to military service, the rights of detainees and the right to peaceful assembly. To encourage the direct application of the Covenant by the courts, a course specifically devoted to the Covenant had been incorporated into the syllabus of the High School of Justice.

17. **Ms. Tsulukiani** (Georgia) said that the Department of State Representation before International Courts of Human Rights was responsible for defending the State before international courts when complaints were lodged against Georgia and ensuring compliance with the courts' decisions by making proposals for their enforcement. Moreover, a few years earlier, Georgia had adopted a procedure, set out in article 310 of the Code of Criminal Procedure, obliging national courts to review cases on which the European Court of Human Rights had delivered a judgement. Several cases in which the European Court had found that Georgia had violated the European Convention on Human Rights had therefore been reviewed by the national courts in favour of the applicants. Such reviews were currently only applicable to decisions by the European Court of Human Rights, but the Ministry of Justice hoped to amend the Code of Criminal Procedure so as to extend them to decisions by other international bodies, including the Human Rights Committee. The budget allocated to the Public Defender had more than doubled in six years, increasing from 1 million lari in 2008 to 2.3 million in 2014, and the Government had committed to further increases.

18. **Ms. Khidasheli** (Georgia) said that a bill to amend the Law on the Occupied Territories was currently before the parliament. It focused on freedom of movement and facilitation of the work of humanitarian organizations, as requested by a number of international organizations, and should be adopted by the parliament at its autumn session. Although it was true that under the current Law the de facto authorities of the occupied territories were considered illegal and the laws which they adopted were consequently considered to be invalid, the Law ensured that inhabitants of the occupied territories had the possibility of obtaining valid civil registry certificates throughout the country. The inhabitants of the occupied territories could also obtain "neutral" passports allowing them to move freely in Georgia and travel abroad, but the procedure for obtaining neutral passports had not been widely used – 43 passports of that kind had been issued in 2013 and only 15 since early 2014. Furthermore, all the welfare or economic development programmes implemented by the Government applied to all Georgians, including in the occupied territories. It should also be noted that under the Government's strategy to engage with communities in the occupied territories several agricultural development projects had been successfully carried out in cooperation with the de facto authorities.

19. **Ms. Tsulukiani** (Georgia) said that during the public consultations on the initial anti-discrimination bill, some segments of the population and civil society had opposed a bill that had otherwise been widely endorsed by international experts. A major awareness-

raising campaign had been launched to promote a better understanding of the bill; however certain changes had had to be made for it to be adopted, which accounted for the differences between the final version of the law and the initial bill. The law as adopted was no less groundbreaking, since it was the first national law which prohibited at the same time direct, indirect and multiple discrimination in both the public and private sphere. The next step would be to set up an independent body responsible for ensuring compliance with the anti-discrimination law and competent to take binding decisions in the event of a violation of the law or, failing that, to give the Public Defender the necessary competence to perform that function himself or herself.

20. **Ms. Mezvrishvili** (Georgia) said that racial discrimination was punishable under the Criminal Code, which also established that discrimination on the basis of race, language, sex, sexual orientation, gender identity, age, religion, political views, disabilities, nationality, ethnic or social origin, place of residence or any other consideration, constituted an aggravating circumstance applicable to all criminal offences.

21. **Ms. Tsulukiani** (Georgia) added that article 50 of the Law on the Media prohibited journalists from spreading hate speech or any content of a racist or discriminatory nature. The Prime Minister had recently instructed the Minister of Justice to review the legislation so as to strengthen regulations preventing political figures and journalists from using freedom of expression for racist or discriminatory propaganda. The legislation was currently under review.

22. **Mr. Talakvadze** (Georgia) stated that, in 2014, the Government had adopted a technical protocol under which all public buildings and services must be made accessible to persons with disabilities within five years. The policy led by the Ministry of Labour, Health and Social Affairs focused more on broadening the range of services offered to persons with disabilities to help them to become more independent than on increasing social benefits. Persons with disabilities enjoyed the same access to basic health services as the rest of the population. A prison unit adapted to the needs of prisoners with disabilities had recently been opened. The unit, which was designed to house 57 inmates, was the first of its kind in the country.

23. **Ms. Kvirikashvili** (Georgia) stated that legal proceedings had been brought against 18 members of staff at Gldani Prison, 16 of whom had been convicted, and an investigation was under way into other cases of inhuman treatment at the prison, for which 2,000 prisoners had already been interviewed. In 2013, legal proceedings had been brought against 48 members of staff at other prisons, including a former prison governor, and 4 members of staff at Ksani Prison, including the prison governor, had been tried and acquitted. In 2014, 12 prison officials had been found guilty under the provisions of the Criminal Code prohibiting torture and inhuman treatment and had been sentenced to terms of imprisonment of up to 9 years. Lastly, the former governor of Kutaisi Prison had been convicted under the provisions of the Criminal Code concerning torture.

24. **Mr. Talakvadze** (Georgia) stated that, during the period 2013–2014, 23 prisoners had claimed compensation for acts of torture and ill-treatment. In addition, psychological and social victim support programmes had been established, along with a new prison hospital offering psychiatric treatment and care services for drug dependency.

25. **Ms. Gabitashvili** (Georgia) stated that, since 2012, educational institutions had been required to provide access to education for students with special needs. Around 4,000 such students had thus been integrated into the public education system. In 2013, 42 women with special needs had attended courses at vocational training centres, also in keeping with the principle of inclusive education, and the State had established classes and special educational services for students who were hearing-impaired, autistic or chronically ill.

26. **Mr. Talakvadze** (Georgia) stated that under the Criminal Code prisoners were guaranteed access to complaint mechanisms and that letter boxes had been installed in prisons in order to allow them to submit their complaints. The Office of the Public Defender, the national preventive mechanism, closely monitored the situation in prisons and the Government had instructed a number of governmental bodies to examine the issues affecting the prison sector. Since 2012, the prison population had fallen by 60 per cent and the number of complaints lodged by prisoners had almost tripled, demonstrating that prisoners no longer feared reprisals at the hands of prison staff. As a result of the prisoners' complaints, the chief inspector of prisons had been dismissed, along with 114 other members of prison staff, and more than 340 prison officials had been disciplined. The nature of the complaints had changed and most now concerned rehabilitation services or food and health care.

27. **Ms. Tsulukiani** (Georgia) stated that the Ministry of Justice had taken into account the claims made by prisoners serving sentences of life imprisonment and had ordered a group of parliamentarians to draw up a report on the conditions of detention for persons sentenced to life imprisonment. In 2012, the State had established a rehabilitation programme for former prisoners, which included psychosocial support, vocational training and employment assistance. To date, social workers involved in that programme had met with over 1,500 former prisoners, 600 of whom had decided to take part in the programme.

28. **Ms. Khidasheli** (Georgia) stated that 11 per cent of parliamentary seats were held by women and that 4 of the Government's 19 ministers were women. In 2012, 45 per cent of public service posts had been held by women. Although there was relative gender balance in the judicial system and the Office of the Prosecutor, including posts of responsibility, more women than men were working in the health, education and culture sectors. After an initial phase of reform of the Labour Code which would focus on striking a balance between employee and employer rights, efforts would be directed towards achieving equal opportunity employment for men and women. To that end, there were plans to adopt positive discrimination measures.

29. **Ms. Gogheliani** (Georgia) stated that, in 2010, the Ministry of Education and Science had launched a programme to teach Georgian as a second language in schools in regions with large ethnic minority communities. Bilingual school textbooks, both in Georgian and in the languages of certain ethnic minorities, had been made available. In 2009, the law on higher education had been amended with a view to introducing quota systems for minorities.

30. **Mr. Talakvadze** (Georgia) stated that all women had the right to contraception and maternal health care as a part of the universal health system. The percentage of women who terminated their pregnancies was falling and the proportion of women of reproductive age using contraceptives was rising. The distribution of contraceptive supplies was covered in part by donor support. The Ministry of Labour, Health and Social Affairs had strengthened counselling and support services for women, who currently had a five- rather than three-day waiting period to decide whether or not to go ahead with an abortion. As part of a survey carried out with the assistance of the United Nations Development Programme (UNDP), 9 per cent of sexually active Georgian women had reported that they had undergone a sex-selective abortion. In April 2014, the Ministry of Labour, Health and Social Affairs, in partnership with the United Nations Population Fund (UNFPA), had launched a national study on the issue, whose findings should make it possible to identify the social and cultural factors involved and to develop the measures to be taken, particularly in terms of legislation and awareness-raising.

31. **Ms. Meskhi** (Georgia) stated that, since 2009, the public assistance fund for victims of trafficking in persons had also been used to offer services to victims of domestic violence. Between 2010 and 2013, the State had opened three shelters with capacities of up

to 20 persons each, including child victims, which provided medical care, psychological support, legal assistance, food and clothing. A fourth shelter, capable of housing 15 persons, would open at the end of 2014. Those shelters were also open to members of the lesbian, gay, bisexual and transsexual (LGBT) community.

32. **Mr. Lordkipanidze** (Georgia) stated that the Law on the Elimination of All Forms of Discrimination prohibited discrimination based on gender and sexual orientation. The Law had introduced the principle of multiple discrimination and allowed for the adoption of special measures not considered to be discriminatory with a view to swifter progress towards de facto gender equality. The national human rights strategy and action plan contained specific objectives relating to the rights of women and of members of the LGBT community. The Office of the Ombudsman was competent to examine cases of discrimination. In such cases, the burden of proof was shifted away from the complainant. The Ombudsman made recommendations and had the power to submit cases to the national courts if it was found that discrimination had occurred. The Constitutional Court had condemned violations of the rights of the members of the LGBT community, particularly in Decree No. 536, dated 4 February 2014. Sexual harassment in the workplace was covered by the Law on Gender Equality. While sexual harassment had not yet been made a criminal offence under the law, by ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Georgia had undertaken to bring its legislation into line with that instrument and to eliminate all forms of sexual harassment.

33. **Ms. Khidasheli** (Georgia) added that the promotion of the rights of the members of the LGBT community was an important component of the national action plan on human rights, which sought to tackle existing negative attitudes and stereotypes in Georgian society. With regard to war crimes, in particular instances of rape committed during the 2008 conflict, in 2008 the Office of the Prosecutor had launched an investigation into crimes against humanity, ethnic cleansing, mass destruction of property and the torture, arbitrary detention and ill-treatment of prisoners. Since 2012, the Ministry of Defence had been conducting an investigation into possible misconduct or crimes by superiors in the chain of command during the 2008 conflict. Owing to the complex nature of the situation, particularly in terms of administration, and the obstacles arising from the occupation of Georgia, those investigations were still ongoing. Furthermore, during the period 2009–2010, the five largest Georgian non-governmental organizations had carried out investigations into the crimes committed during the 2008 conflict and had transmitted their report to the International Court of Justice. Only one case of rape had been filed and the perpetrators had not yet been identified.

34. **Ms. Kvirikashvili** (Georgia) stated that two articles of the Criminal Code had been amended in order to further criminalize domestic violence, in particular by extending the definition of family members to cover persons living under the same roof and by providing for penalties in cases of psychological violence. Marital rape was covered by the provisions of the Criminal Code concerning rape. Crimes against sexual freedom and sexual abuse were also punishable under the Criminal Code and abuse of power, particularly in the performance of official duties, was considered an aggravating factor.

35. **Ms. Gabitashvili** (Georgia) stated that the Law on General Education prohibited any use of violence in schools and all acts of violence must be punished in accordance with the regulations in force. In particular, the Code of Ethics for Teachers prohibited the use of emotional and psychological pressure. The Ministry of Education and Science had established an institution responsible for guaranteeing safety in schools and staffed by officials trained to identify child victims of abuse perpetrated at school or within the family, as well as children at risk of coming into conflict with the law.

36. **The Chairperson** thanked the delegation and invited it to continue with its replies during the next meeting.

The meeting rose at 6 p.m.

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Summary record of the 3075th meeting
Held at the Palais Wilson, Geneva, on Friday, 11 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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Fourth periodic report of Georgia (continued)

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Georgia (continued) (CCPR/C/GEO/4; CCPR/C/GEO/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Georgia took places at the Committee table.*

2. **Ms. Tsulukiani** (Georgia) said that Mr. Ben Achour had raised an important point concerning plea bargaining in cases involving torture. Plea bargaining had been introduced into Georgian legislation in 2004, under article 218 of the Criminal Code, and enabled the Public Prosecutor's Office, in exceptional circumstances, to offer a defendant a plea bargain, under which, if the defendant concerned cooperated, and if it enabled the Prosecutor's Office to dismantle a criminal network or uncover a serious crime, the defendant could enter a guilty plea but avoid any form of penalty. She used the word "defendant" advised, rather than the word "accused", because under Georgian law an accused person could not be offered a plea bargain in cases involving torture. The Georgian parliament was currently proposing to amend the law in such a way that the same prohibition applied to a defendant: the proposed amendment had gone through two hearings and, after a third, would become law. As she understood it, the Ombudsman had recommended a blanket ban on any plea bargaining in cases of torture or ill-treatment. She had strong doubts about the proposal, because it might prevent the Prosecutor's Office from breaking down the omertà relating to events within a particular prison.

3. On another important question, namely the establishment of an institution with the power to examine offences committed by police or law enforcement officers, the Government had extensive plans for future action which she would describe later, time permitting. All the ministries would be involved in such an oversight institution, so an interministerial committee had been set up; at its latest meeting, it had appointed a task force made up of representatives of the Ministry of the Interior, the Prosecutor's Office and the Ministry of Corrections to promote the establishment of that institution. It was a challenge, because there were many entrenched practices to tackle, but the process had, with help from the European Union, begun in earnest.

4. **Ms. Mezvrishvili** (Georgia) said that Mr. Ivane Merabishvili had been convicted under article 333 of the Criminal Code, sentenced to 4 and a half years' imprisonment and barred from holding an official position for 13 and a half months. The case was currently before the Court of Appeal. The Prosecutor's Office was currently investigating other officials who had violated the right of assembly, but the case was complex and the officials involved were hard to identify because they had worn masks when dispersing the crowds. The Prosecutor's Office was also investigating two deaths that had occurred on 26 May 2011, the circumstances of which had initially been incorrectly understood. In another case, a man called Mr. Niko Samkharadze had claimed to have suffered ill-treatment and beating at the hands of the police.

5. The Prosecutor's Office was also investigating the death of Mr. Mamuka Mikautadze. It was trying to ascertain the cause of death. The family and colleagues of Mr. Mikautadze had been questioned and their version of events checked by investigators. The intelligence services were also involved. No conclusion had yet been reached.

6. Another case under investigation was that of the death of Mr. Shalva Tatukhashvili, who had been a witness for the prosecution of Mr. Data Akhalia, formerly his superior officer, and as such had been given special protection. His friends and colleagues had been questioned. Surveillance pictures showed that he had been at a training centre with his

lawyers when he had disappeared. It could not be ascertained whether he had suffered ill-treatment at the hands of public officials, but the cause of death had been respiratory failure from alcohol intoxication in combination with psychotropic substances. She added that, in his earlier statement to the Prosecutor's Office, he had said that he had been subjected to no physical or psychological pressure or violence and had made his statement voluntarily.

7. **Ms. Khidasheli** (Georgia) said it should be pointed out that neither of the latter deaths had occurred while the person concerned had been in custody. The death of Mr. Mikautadze had clearly been suicide, while that of Mr. Tatukhashvili had probably been connected with the prosecution proceedings in which he had been involved. He had provided valuable evidence against his former superior in the Department of Constitutional Security, who had been accused of involvement in the deaths of three young people. The suspicion must be that he had been killed to prevent him from testifying to the chain of command of police officers accused of excessive use of force.

8. **Mr. Zlătescu** said he understood that a number of prison officers had been imprisoned for torture-related offences and wondered whether the convictions were for torture itself or abuse of power. He also noted that many officials who had abused their power in the past were still free and requested an explanation. Lastly, he said that tens of thousands of victims of torture required rehabilitation and social reintegration and asked whether such activities were impeded by lack of funds.

9. **Ms. Kvirikashvili** (Georgia) said that the 48 Prison Service employees, including 8 governors and 8 deputy governors, had been convicted of offences, the majority of them under article 144.1 (torture) or 144.3 (ill-treatment) of the Criminal Code. Abuse of power had not been involved.

10. **Mr. Talakvadze** (Georgia) said, with regard to the rehabilitation of victims, that the budget for prison health care had risen in 2012 by an unprecedented 100 per cent, and that at a time when the prison population had fallen by 60 per cent. The success of medical rehabilitation had been such that, out of a prison population of 10,000, there had been 8,600 transfers to civilian hospitals for specialized care in such areas as diagnostics, surgical intervention and therapeutic services. More psychiatrists had been hired and help was provided for potential suicides or persons suffering from post-traumatic stress disorder. A new rehabilitation unit had been opened for persons with physical disabilities arising out of violent practices within and outside prison. With help from donors, civil society and NGOs, two NGO service-providers had been given considerable resources to offer psychosocial and medical rehabilitation for persons already released from prison. The biggest problem in that regard was that Georgia had few specialists in psychological and psychosocial care and more resources would need to be allocated.

11. **Mr. Kälin** asked about the revision of article 310 of the Code of Criminal Procedure, which related to the reopening of cases. The delegation had said that the revision also applied to article 8 of the European Convention on Human Rights, which was, of course, not a criminal provision. He wondered how that could be. Secondly, he asked whether the courts could reopen a case only if recommended to do so by a ministry or whether they could do so on their own motion.

12. **Ms. Tsulukiani** (Georgia) said that the Criminal Court of General Jurisdiction could, on the recommendation of the Ministry of Justice, reopen a case in which there had been a judgement on the basis of a unilateral declaration by the State. The Court might reach the same decision but would ensure that the defendant had the right of defence, which would not have been the case before. In the first such retrial, the plaintiff in *Taktakishvili v. Georgia* had been acquitted. Article 423 of the Code of Civil Procedure played the same function in civil cases. In one particular case, she had noted beforehand that the trial would violate article 8 of the European Convention on Human Rights and an amicable settlement

had been negotiated. As a result, the child at the centre of the case had learned its father's name and the father paid alimony. Such action was currently possible only in relation to the European Convention, but the Government intended to introduce amendments under which any recommendation by an international body could be executed by Georgia. Thus, for example, the Human Rights Council had identified a violation of international law, but, under Georgian law, Georgia had been unable to execute its recommendation.

13. **Mr. Salvioli** asked why the waiting period before a woman was allowed to have an abortion had been extended from three to five days. He asked on what grounds the decision had been taken. It was contrary to the recommendation of the World Health Organization. He also asked about the possibility of objections by health workers on grounds of conscience to carrying out abortions and enquired whether the State could guarantee access to abortions.

14. **Ms. Tsulukiani** (Georgia) said that, when it had been part of the Soviet Union, Georgia had had 5 million inhabitants. The population had since fallen to 4 million and demographic data suggested that, in 20 years' time, the figure would be 2 million. The decision to extend the waiting time for abortions had thus been primarily a political one, decided on by the Cabinet. There were, however, also health considerations. The first impulse for many mothers was to abort, because the situation of unmarried mothers could be difficult, especially in rural areas. Giving more time for reflection would both help women and contribute to resolving a catastrophic demographic situation. Once the waiting period was over, however, women faced no difficulties of access to abortion. There had been no case in which a doctor had refused to carry out an abortion.

15. **Mr. Talakvadze** (Georgia) said that the social and cultural environment put women under considerable pressure and stress when they had to decide about having an abortion. Time was needed for the woman to have discussions with the family, and to weigh up her moral beliefs, the cost of raising a child, the medical side effects of both abortion and pregnancy, the possibility of adoption and the cost of the abortion itself. Most professionals agreed that three days was not enough time to decide. As for access to abortion, the Government and professional associations had never argued that blocking access to abortion was viable, especially in view of the country's unfortunate experience in the early 1990s. Abortions had been banned and the numbers had immediately gone down. Five years later, however, maternal mortality had increased significantly and it had been realized that the number of unreported illegal abortions had risen dramatically. Georgia could never revert to that situation. There was no perfect solution in a debate with pro-choice and pro-life advocates, but Georgia had done its best to respond to a complex situation.

16. **The Chairperson** said that the answers from Ms. Tsulukiani (Minister of Justice) and Mr. Talakvadze (Deputy Minister of Corrections) were the most informative, thoughtful and relevant he had ever heard in the Committee.

17. **Mr. Kälin** said in relation to question 15 of the list of issues that the Code of Administrative Offences did not contain sufficient safeguards for detainees. The police were not required to inform a detainee of his or her rights and counsel was not present at administrative hearings. There was often inadequate time to provide a defence. Even though no criminal procedure was involved, there should be guarantees in place.

18. With regard to the reform of the judiciary, referred to in question 19, he commended the progress made by Georgia. However, in view of the very low acquittal rates in trials, he asked whether the judiciary were truly independent. Secondly, he requested the delegation's comments on allegations that a number of cases against senior officials had been politically motivated. Thirdly, he noted that the Venice Commission of the Council of Europe had found that the provisions relating to political prisoners in the Amnesty Law adopted in January 2014 did not comply with the fundamental principles of the rule of law.

19. Regarding question 20, he noted that, according to paragraph 91 of the written replies, a judge could overturn a jury decision only if it contradicted evidence. The power to review was thus extremely limited and was incompatible with article 14.

20. He was grateful for information already provided regarding question 21, but requested further information about possible legal changes to the practice of plea bargaining. It was reported that, since the recent elections, there had been 2,000 cases of people claiming that pressure had been put on them to make a plea bargain – a fact that might be linked to the low acquittal rate. A person was likely to accept a plea bargain if he or she risked being convicted, even if innocent. It could also be connected with zero tolerance of drugs, which meant that there was a high risk of receiving a prison sentence. It had also been suggested by some NGOs that the plea bargain had been used as a way of extracting money from drug offenders and their families; the claim was that the equivalent of more than US$ 20 million had been thus paid out in 2008–2009. He asked how the Government would deal with that situation and also with situations where people had come forward claiming to be victims of coercion. Lastly, he asked how the zero tolerance principle affected the prison system.

21. **Ms. Waterval**, said with reference to question 16 of the list of issues that paragraph 74 of the written replies stated that the Joint Permanent Commission of the Ministry of Corrections and the Ministry of Labour, Health and Social Affairs had not released inmates prior to 2013 and she asked what the criteria for release were. She also noted that in paragraph 75 of the written replies, the methodology used by a number of bodies was being reviewed and she asked what the outcome had been. Lastly, she requested further information about halfway houses and the impact of non-custodial sentences on the prison system. Any statistics that the delegation could provide would be welcome.

22. She requested further information about prisons Nos. 6 and 7, in which conditions were atrocious, with underground cells and no infrastructure for prisoners with limited abilities, who had to be helped by fellow inmates. She also expressed concern about the large number of drug-addicted prisoners.

23. With regard to question 22 of the list of issues, she asked whether the reform of the juvenile justice system had been implemented throughout the country and what the effects of the reform had been on the system.

24. **Mr. Salvioli** said with reference to question 18 that paragraph of 82 of the written replies referred to the difficulties of lesbian, gay, bisexual and transgender persons only in connection with the prison system. His question had been broader: he wondered how the State responded to complaints of violence and the outcome of investigations into anti-homophobia marches held in 2012 and 2013.

25. **Mr. Fathalla** said that in its reply the previous day concerning question 23, the delegation had not dealt with a number of questions. He asked whether internally displaced persons (IDPs) had access to a complaints mechanism when, for example, their right to housing was not respected. Secondly, he asked for clarification of the statement in paragraph 114 of the written replies that IDPs enjoyed "equal and unlimited participation" in social and economic relations and in receiving social and public service. The Committee had already requested information on measures taken to improve access to consultation, medical services, water and sanitation, and employment-generating activities for IDPs at new resettlement sites. He also asked whether Georgia paid compensation in cases where restitution of housing and lands left behind was not possible. Lastly, he asked whether IDPs had participated in the development of the bill relating to persons displaced from the occupied territories of Georgia. The bill listed many fine aims, but he wondered how such aims could be achieved.

26. **Mr. Ben Achour** invited the delegation to comment on reports that property belonging to the religious groups mentioned in paragraph 38 of the State party's report (CCPR/C/GEO/4) had still not been returned, and that the Government assisted the Georgian Orthodox Church in confiscating property from religious minorities. He enquired about the legal status of the Constitutional Agreement of 14 October 2002, which, according to some sources, discriminated in favour of the Georgian Orthodox Church, which had allegedly received US$ 120 million since 2002, in addition to tax exemptions and allowances for the repair and maintenance of places of worship. He also wished to know the outcome of the criminal investigations referred to in paragraph 116 of Georgia's replies to the list of issues (CCPR/C/GEO/Q/4/Add.1), and requested further information on the incidents that had taken place in Mereti on 26 June 2012 and Karaleti on 12 July 2012.

27. **Mr. Zlătescu**, noting that, for a long time, the State had promoted laws requiring ethnic minorities to speak Georgian in order to access a range of governmental and administrative services, asked what measures and policies had been adopted to boost the political representation of Armenian and Azeri communities. The delegation should indicate whether the Government held consultations with *sakrebulo* (local elective bodies) in towns where ethnic minorities accounted for over 20 per cent of the population. He asked whether the National Council on Civic Integration and Tolerance had co-opted minority representatives, and whether its capacity and budget had been increased to that end.

28. Turning to the issue of minority languages, he asked whether Georgia had ratified the European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities and, if not, whether it intended to do so. He wished to know whether joint commissions had been set up with Azerbaijan and Armenia to develop new history textbooks in minority languages for Georgian schools, whether core social science subjects were also taught in Azeri and Armenian, and whether textbooks on Georgian as a second language had been supplied to minority educators.

29. With regard to the Roma community, he asked whether homeless shelters and medical services were available to them, whether they had access to free emergency care, and whether Roma women had no option but to give birth at home without a doctor or [illegible]e. The delegation should indicate whether members of the Roma community had been subjected to illegal detention in recent years, including being held in pretrial facilities for more than 48 hours. Lastly, he wished to know whether the State party had made provision for a possible influx of migrants from other post-Soviet States, and whether a plan had been developed for the integration of Roma and Moldovan populations.

30. **Ms. Tsulukiani** (Georgia) said that, under the proposed amendment to the Code of Administrative Offences, the maximum permissible length of administrative detention would be reduced from 90 days to 15, law enforcement officials would be obliged to inform detainees of the reasons for their arrest, and judges would be responsible for upholding the principle of equality of arms. A copy of the bill would be submitted to the Committee after the meeting.

31. In response to questions on the judiciary, she said that reforms were under way and that steps were being taken to strengthen the independence of judges. The Ministry of Justice, with the support of the United Nations Children's Fund and the European Union, had drafted a Juvenile Justice Code, which would be brought before parliament later in 2014, to address the lack of specialized juvenile judges in Georgia.

32. Further reforms were being considered to ensure the automatic distribution of cases among judges and to introduce a fair mechanism for sending judges on mission, based on the principle of security of judicial tenure such that vacancies would be filled, at least temporarily, by reserve judges.

33. **Mr. Tsuladze** (Georgia) said that, in previous years, low acquittal rates and lengthy prison terms and periods of administrative detention, particularly for corruption and related offences, could be ascribed to a strict Government response to high crime rates and fragile State institutions. More recently, crime rates had declined and the Criminal Code had consequently been liberalized, resulting in a reduction in the average length of administrative detention and a gradual increase in acquittal rates, a trend that was expected to continue. The relevant statistics would be put at the Committee's disposal in due course.

34. **Ms. Tsulukiani** (Georgia) said that the jury trial system, which had divided opinion in the country since its introduction in 2010 for cases of aggravated homicide, needed to be reformed in order to comply with the Covenant and the European Convention on Human Rights. Current shortcomings included a failure to provide jurors with predetermined lists of admissible evidence and the impossibility of conducting merits reviews. A decision on whether to extend the jury trial system to cover all crimes would be made by 2016.

35. With reference to the plea bargaining system, she said that, upon her appointment as Minister of Justice, it had generated 37 million lari. A number of important reforms to the system had been put forward and would enter into force in the near future, including a return to the keeping of minutes for negotiations between defendants and the Prosecutor's Office, and the requirement for legal assistance to be made available throughout proceedings. Moreover, judges would be given greater powers to annul plea bargaining agreements made under duress, and to reassign negotiations to a more senior prosecutor. The practice of exchanging money for freedom would be brought to an end.

36. Turning to the issue of drug policy, she said that, while measures to combat drug use in Georgia were proving effective, steps had to be taken to ensure that users who were not dealers received appropriate medical care. To that end, a package of legislative amendments had been drafted, providing for increased support for users and heavier penalties for persons arrested in possession of commercial amounts.

37. **Mr. Talakvadze** (Georgia) said that the package would also provide for comprehensive legal support and harm reduction programmes for users, and the expansion of specialized care services for drug addicts in prisons, notably through the drug addiction unit established in June 2014. From 2015, grants provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria would be used to further expand opioid substitution therapy and harm reduction services, while prisoners already had universal access to HIV services and hepatitis C diagnostic testing.

38. **Ms. Khabazi** (Georgia) said that persons detained for administrative offences were informed of their procedural rights and the reasons for their arrest at three stages: verbally at the time of arrest, through the arrest protocol required under article 245 of the Code of Administrative Offences, and by means of lists and posters in five different languages visibly displayed in temporary detention facilities. The right to unrestricted, confidential access to legal counsel was set forth in article 252 of the Code.

39. **Mr. Talakvadze** (Georgia) said that the 2014 budget of the Ministry of Health for drug-related services was double that of the previous year, and that, since 2012, there had been a fall in the rate of imprisonment for drug consumption and possession for personal use.

40. **Ms. Tsulukiani** (Georgia) said that another of the aims of the amendment to the Code of Administrative Offences was to ensure that persons in administrative detention were held in prison cells, rather than temporary detention facilities managed by the Ministry of Internal Affairs.

41. **Ms. Khidasheli** (Georgia) said that the amnesty in December 2012 had been applied to all prisoners convicted of drug use. On the issue of administrative detention, it was

important to focus not only on the duration of detention but on the number of people actually being detained, which had been reduced significantly. In the past, the police had arrested large groups of people during mass rallies as a matter of course, but they now made arrests only in extreme cases.

42. One of the biggest challenges faced by the new Government was dealing with the tens of thousands of complaints lodged with the Prosecutor's Office in relation to crimes committed during the previous regime. Complaints included requests for the reinvestigation of cases and review of court judgements, allegations of torture and ill-treatment, and requests for the restitution of illegally expropriated property. Once the cases were processed in the justice system, the major challenge for the State would be the payment of compensation to victims, which would amount to many billions of Georgian lari.

43. With regard to the concerns about selective justice, there were two main categories of cases against former public officials: violent crimes and corruption. The charges faced by Mr. Merabishvili, the former Minister of Internal Affairs, related to the excessive use of force during the mass demonstrations on 26 May 2011, which had resulted in several deaths and many injuries and the incommunicado detention and torture of demonstrators. The political opposition was complaining that political opponents were being targeted, but it was important that the law was applied in the same way to everyone and that no distinction was made on the basis of political affiliation. The former mayor of Tbilisi, Mr. Ugulava, and the former Minister of Defence, Mr. Kezerashvili, faced charges of a financial nature, involving extortion and the illegal transfer of money for political and personal gain. Referring to the various cases of attacks against demonstrators and journalists mentioned by the Committee, she said the fact that the current Government had been in opposition at the time, and that some members had even been the victims of attacks themselves, meant that it must exercise extreme caution in pressing charges to ensure that it was not seen to be exacting political retribution.

44. The 2002 Constitutional Agreement between the Georgian Orthodox Church and the State, which formed part of the Constitution, contained no provisions intended to discriminate against any other religious group or grant special privileges to the Orthodox Church. The Agreement simply defined the separation of church and State and stipulated that neither party would interfere in the affairs of the other.

45. **Mr. Talakvadze** (Georgia) said that, with the engagement of civil society, the joint commission of the Ministry of Health and the Ministry of Corrections had been completely reformed the year before. The commission was responsible for the compassionate release of prisoners who were chronically or terminally ill and elderly prisoners who had served half of their sentence. Clear criteria had been established for compassionate release and were in line with the International Classification of Diseases. In 2013, the commission had released 104 prisoners, 64 per cent of whom had been elderly. In the previous four years, the commission had not released a single prisoner with a terminal condition because its criteria had been out of date and it had failed to respond to applications from the prison medical service promptly and adequately.

46. There had also been reforms in relation to early conditional release, following which more than 2,400 prisoners had been granted conditional release in 2013, compared to a total of 800 prisoners over the previous four years. There were plans to further review the criteria for early conditional release. The halfway house was a new institution for prisoners due to be released within a year, which provided them with skills training and education to facilitate their reintegration into society. An independent evaluation of the institution would be conducted at the end of 2014.

47. The three prisons that had been most heavily criticized by human rights monitoring bodies in the past — prisons Nos. 1, 3 and 4 — had been closed the previous year and

replaced with new institutions. High-security prisons Nos. 6 and 7 had undergone major renovations and now complied with minimum living and space standards. The long-term plan was to also close those prisons but replacement prisons must first be completed. There was a special accommodation unit for high-dependency prisoners with disabilities of all kinds, which provided adapted conditions and long-term care and assistance from nurses and other care personnel.

48. **Ms. Mezvrishvili** (Georgia) said that the Prosecutor's Office and the Ministry of Justice were working to strengthen the Juvenile Diversion and Mediation Programme, which had been expanded to cover the whole country. Ensuring the proper treatment of juveniles was one of the priorities of the Prosecutor's Office; specialized juvenile prosecutors would be appointed in all its structural units. The recommendation that detention should only be used as a last resort was being implemented. The number of juveniles involved in the Programme who had been successfully diverted had increased in 2013. The recidivism rate among diverted juveniles was very low and the juvenile detention rate had fallen in 2013 and now remained stable.

49. **Ms. Kvirikashvili** (Georgia), referring to the case of 7 May 2013, said that the Ministry of Internal Affairs had initiated an investigation on the same day, as a result of which five persons, including two Orthodox priests, had been prosecuted. The prosecution against one of the individuals had been terminated in August 2013, and the Prosecutor's Office had unsuccessfully appealed the decision. The court was currently hearing the case against the four remaining defendants. In the case of violence against NGO members, the violence was being tried as a misdemeanour. Three persons had been convicted for violence on the grounds of sexual orientation.

50. **Ms. Gugeshashvili** (Georgia) said that a new set of guiding principles had been developed for the allocation of housing to internally displaced persons (IDPs). Under the new procedure, each family was evaluated and assigned a number of points, and those with the most points were given priority. Those below the poverty line, persons with disabilities and female-headed households received higher points. Applicants could lodge complaints with the Ministry of Internally Displaced Persons about their evaluation and could provide additional information on their situation. Once they had received housing, beneficiaries could also submit complaints about the quality of the housing. The new approach was to allow IDPs to live in larger cities, where they had better access to employment opportunities, or to remain in the same place if they were already well integrated. Housing with plots of land could also be provided in rural areas for IDPs with an agricultural background.

51. Regarding access to health, education and other services, an interministerial approach was adopted, with IDPs being integrated into the strategies of individual ministries. Funding of 5 million euros had been secured from the European Union for livelihood projects. The housing budget was being continuously increased, and by the end of 2014 some 2,500 families would have received housing. Plans were also under way to transfer private ownership of houses to IDPs. Progress had also been made in the restitution of housing, and an action plan was being implemented in that regard.

52. **Mr. Tangiashvili** (Georgia) said that significant progress had been made since 2007 in the restitution of property confiscated during Soviet rule to religious organizations. Under an amendment to the Civil Code, religious organizations now had the choice to register as legal entities of public law, which put them in a much better position to receive property from the State. Regardless of their status, religious organizations enjoyed total freedom from the State. The Ministry of Culture had been granting the status of cultural heritage monuments to the religious buildings of various groups, including Armenian churches, mosques and synagogues.

53. In November 2013, the Government had set up an inter-agency commission to make recommendations on restitution issues. The commission had concluded that the Evangelic Lutheran, Islamic, Judaic, Roman Catholic and Armenian Apostolic churches were the religious unions whose losses were factually established by numerous independent documented sources and their restitution was in no doubt. In addition to the Constitutional Agreement with the Georgian Orthodox Church, the State had allocated US$ 2.5 million to those five religious unions to be distributed proportionally. Since the exact amount of damage suffered by those organizations was unknown, the payment was symbolic.

54. In February 2014, the Government had established the State Agency for Religious Issues to replace the commission, which was tasked with supporting the Government in its relations with religious organizations, including property restitution. The Agency prepared reports, issued recommendations and drafted legal acts, inter alia.

55. With regard to the removal of the minaret from the mosque in the village of Chela, the documents submitted for the building application had not been in compliance with the law and there had been a loophole in the legislation. Officials from the Ministry for Reconciliation and Civic Equality had visited the village and consulted with local authorities and religious leaders to enable them to put the documents in order and apply for a legitimate building permit for the minaret.

56. **Ms. Beselia** (Georgia) said that the Parliamentary Committee on Human Rights and Civil Integration was responsible for monitoring how human rights were protected by the individual ministries. In 2012, the Government had declared protection of human rights a main priority and had developed a seven-year human rights strategy. The Committee had worked on the Amnesty Law to reduce the number of prisoners and with NGOs on the criteria for the release of political prisoners.

57. **Mr. Shany** said that the timing of investigative measures and arrests in some cases to coincide with municipal or presidential elections would explain some of the concerns about selective justice. The nature of some of the allegations was also very open-ended, such as abuse of authority or neglect of official duty. He wondered whether the State party had considered addressing the problem of the perceived lack of impartiality of the justice system.

58. **Ms. Khidasheli** (Georgia) said that the only reason Mr. Ugulava had been arrested prior to the local elections was that he had been planning to leave the country and had been intercepted at the airport. Some of the charges were open-ended because the investigations had not yet been concluded. The Government was taking steps to ensure the independence of the judiciary and the depoliticization of the justice system and was developing a legislative package to that end.

59. **Ms. Tsulukiani** (Georgia) said that human rights were at the centre of all the reforms being carried out in her country, which was committed to correcting the wrongs of the past and creating a better future based on human rights.

60. **The Chairperson** said that, although much had been achieved over the past two years, the State party was aware of the work that remained to be done. Georgia faced very serious challenges, but there appeared to be a commitment to ensuring the fullest and most effective implementation of the Covenant.

The meeting rose at 1.05 p.m.